



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 24, 2012

Ms. Neera Chatterjee
Office of General Counsel
The University of Texas System
201 West Seventh Street
Austin, Texas 78701-2902

OR2012-15191

Dear Ms. Chatterjee:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 465967 (OGC# 144885).

The University of Texas at Austin (the "university") received a request for certain correspondence during a specified time period pertaining to a specified study and all documents held by any of five named individuals pertaining to a named individual or the specified study. You state you will release some information to the requestor. You state the university has redacted information pursuant to the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code.¹ You claim that some of the submitted information is excepted from disclosure under sections 552.101 and 552.111

¹The United States Department of Education Family Policy Compliance Office (the "DOE") has informed this office that FERPA does not permit state and local educational authorities to disclose to this office, without parental consent, unredacted, personally identifiable information contained in education records for the purpose of our review in the open records ruling process under the Act. The DOE has determined that FERPA determinations must be made by the educational authority in possession of the education records. We have posted a copy of the letter from the DOE to this office on the Attorney General's website: <http://www.oag.state.tx.us/open/20060725usdoe.pdf>.

of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.²

Initially, you state some of the submitted information was the subject of previous requests for information, as a result of which this office issued Open Records Letter Nos. 2012-15013 (2012) and 2012-13958 (2012). In those rulings, we determined the university must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 51.971 of the Education Code. We have no indication there has been any change in the law, facts, or circumstances on which the previous rulings were based. Accordingly, to the extent the submitted information is identical to the information previously requested and ruled upon by this office, we conclude the university must rely on Open Records Letter Nos. 2012-15013 and 2012-13958 as previous determinations and withhold the identical information in accordance with those rulings. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). To the extent the submitted information is not encompassed by the previous rulings, we will consider your arguments against disclosure.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. This exception encompasses information other statutes make confidential, such as section 51.971 of the Education Code, which provides, in part:

(e) Information is excepted from disclosure under [the Act] if it is collected or produced:

(1) in a compliance program investigation and releasing the information would interfere with an ongoing compliance investigation[.]

Educ. Code § 51.971(e)(1). Section 51.971 defines a compliance program as a process to assess and ensure compliance by officers and employees of an institution of higher education with applicable laws, rules, regulations, and policies. *Id.* § 51.971(a)(1). You assert the submitted information, with the exception of the information you have marked for release, pertains to an investigation into scientific misconduct that was initiated as a result of a complaint made to the university. You state the investigation is being conducted by the

²We assume the “representative sample” of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

university's Research Integrity Officer. You further state the purpose of the review is to assess and ultimately ensure that the university has complied with all applicable law, rules, regulations, and policies. Based on your representations and our review, we agree the information at issue pertains to the university's compliance program for purposes of section 51.971. *See id.* § 51.971(a). You inform this office the information at issue pertains to an ongoing compliance investigation by the university. You also represent release of the information at this time would interfere with, and potentially compromise, that investigation. Accordingly, we conclude, that with the exception of the information the university has marked for release, the university must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 51.971(e)(1) of the Education Code.³

You mark e-mail addresses and state you will redact e-mail addresses in the remaining information under section 552.137 of the Government Code pursuant to Open Records Decision No. 684 (2009).⁴ We have marked additional e-mail addresses in the remaining information that are subject to section 552.137, which excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body," unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). Gov't Code § 552.137(a)-(c). The marked e-mail addresses are not specifically excluded by section 552.137(c). You state the university has not received affirmative consent for the release of these e-mail addresses. Therefore, the university must withhold the e-mail addresses you have marked, as well as the additional e-mail addresses we have marked, under section 552.137 of the Government Code. *See id.* § 552.137(b).

In summary, to the extent the requested information is identical to the information submitted in Open Records Letter Nos. 2012-15013 and 2012-13958, the university must rely on those rulings as previous determinations and withhold such information in accordance with the rulings. With the exception of the information you have marked for release, the university must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 51.971(e)(1) of the Education Code. The university must withhold the marked e-mail addresses under section 552.137 of the Government Code. The university must provide the remaining information marked for release to the requestor.

³As our ruling for this information is dispositive, we need not address your remaining arguments against its disclosure.

⁴Open Records Decision No. 684 is a previous determination issued by this office to all governmental bodies authorizing them to withhold certain categories of information, including an e-mail address of a member of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free at (888) 672-6787.

Sincerely,



Cynthia G. Tynan
Assistant Attorney General
Open Records Division

CGT/akg

Ref: ID# 465967

Enc. Submitted documents

c: Requestor
(w/o enclosures)