



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 16, 2012

Mr. Ronny H. Wall  
Associate General Counsel  
Office of the General Counsel  
Texas Tech University System  
P.O. Box 42021  
Lubbock, Texas 79409-2021

OR2012-18521

Dear Mr. Wall:

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# 472216.

Texas Tech University (the "university ") received two requests for information from specified time periods related to the university's former men's basketball coach and alleged National Collegiate Athletic Association (the "NCAA") rules violations in the university's men's basketball program. You inform us some of the requested information has been or will be released to the requestors. You also inform us the university has redacted student-identifying information pursuant to the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code.<sup>1</sup> See Gov't Code §§ 552.026 (incorporating FERPA into Act), .114 (excepting from disclosure "student records"); Open Records Decision No. 539 (1990) (determining same analysis applies under section 552.114 of Government Code and FERPA). You claim the submitted information is

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<sup>1</sup>The United States Department of Education Family Policy Compliance Office (the "DOE") has informed this office FERPA does not permit state and local educational authorities to disclose to this office, without parental or student 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 FERPA determinations must be made by the educational authority in possession of the education records. A copy of this letter may be found on the Office of the Attorney General's website: <http://www.oag.state.tx.us/open/20060725usdoe.pdf>.

excepted from disclosure under sections 552.101, 552.107, and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>2</sup>

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. A governmental body may not promulgate a rule designating information as confidential so as to bring it within section 552.101 unless it has been given specific statutory authority. Open Records Decision No. 484 at 2 (1987) (governmental bodies may not by rule or contract render information confidential for purposes of Act). Here, the university states section 9 of article III of the General Appropriations Act requires the university to make “rules and adjustments [that] specifically prohibit violation of [NCAA] or other governing body rules with respect to recruitment of athletes.”<sup>3</sup> Thus, we conclude the university has been given specific authority to enact rules prohibiting the violation of NCAA regulations. You advise us that the university’s Regent Rules specifically mandate adherence to NCAA rules and regulations. *See generally* Open Records Decision No. 462 at 7 (1987) (member university is answerable to NCAA for violations of NCAA rules by student athletes and personnel). You further explain that section 131.002 of the Civil Practices and Remedies Code adopts the NCAA rules. *See* CIV. PRAC. & REM. CODE § 131.002. NCAA Bylaw 32.1.1 expressly prohibits an institution subject to NCAA rules from releasing details regarding an ongoing investigation of NCAA rules violations. You provided a copy of Bylaw 32.1.1, “Confidentiality,” which provides:

32.1.1 Confidentiality. The Committee on Infractions, the Infractions Appeals Committee and the enforcement staff shall treat all cases before them as confidential until they have been announced in accordance with the prescribed procedures. In addition, an institution and any individual subject to NCAA rules involved in a case shall treat that case under inquiry by the enforcement staff as confidential until the case has been announced in accordance with prescribed procedures.

NCAA Bylaw 32.1.1. The university informs us the submitted information pertains to an ongoing investigation into NCAA violations involving the university’s men’s basketball program. The university further informs us the investigation has not been announced in accordance with NCAA procedures. Having considered your arguments and the documentation you provided, we find you have shown the university is prohibited by law

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<sup>2</sup>We 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.

<sup>3</sup>*See* General Appropriations Act, Act of May 29, 2009, 81st Leg., R.S., ch. 1424, art. III, sec. 9.

from releasing the submitted information. Therefore, this information must be withheld from disclosure under section 552.101 of the Government Code as information made confidential by law. *See* Open Records Decision No. 584 at 3 (1991) (provisions of law that prohibit release of information bring it within scope of section 552.101).<sup>4</sup>

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](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,



Kenneth Leland Conyer  
Assistant Attorney General  
Open Records Division

KLC/bhf

Ref: ID# 472216

Enc. Submitted documents

c: 2 Requestors  
(w/o enclosures)

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<sup>4</sup>As our ruling is dispositive, we need not address your remaining arguments against disclosure.