ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 25, 2013

Ms. Zeena Angadicheril
Office of General Counsel
The University of Texas System
201 West Seventh Street
Austin, Texas 78701

OR2013-03135

Dear Ms. Angadicheril:

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# 479609 (UT OGC# 147732).

The University of Texas at Austin (the "university") received a request for any communication to, from, or regarding a named individual and the university president's office and the university athletic department from September 1, 2012 to the date of the request. You state you will release some of the requested information to the requestor. You explain the university is redacting some information pursuant to the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232(g).[1] You have redacted e-mail addresses under section 552.137 of the Government Code pursuant to Open Records Decision No. 684 (2009).[2] You claim a portion of the submitted information is not subject to the Act. You claim the remaining requested information is excepted from disclosure

[1]We note the United States Department of Education Family Policy Compliance Office (the "DOE") has informed this office that FERPA does not permit a state educational agency or institution to disclose to this office, without parental or an adult student's consent, unredacted, personally identifiable information contained in education records for the purpose of our review in the open records ruling process under the Act. *See* 34 C.F.R. § 99.3 (defining "personally identifiable information"). The DOE has determined that FERPA determinations must be made by the educational institution from which the education records were obtained. A copy of the DOE's letter to this office may be found on the Office of the Attorney General's website: http://www.oag.state.tx.us/open/20060725usdoe.pdf.

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

under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.[3]

You assert a portion of the information you have marked in Tab 5 is not subject to the Act. The Act is applicable to "public information." Gov't Code § 552.021. Section 552.002 of the Act provides that "public information" consists of "information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business: (1) by a governmental body; or (2) for a governmental body and the governmental body owns the information or has a right of access to it." *Id.* § 552.002(a). Thus, virtually all information that is in a governmental body's physical possession constitutes public information that is subject to the Act. *Id.* § 552.002(a)(1); *see also* Open Records Decision Nos. 549 at 4 (1990), 514 at 1-2 (1988). The university argues that some of the submitted e-mails are not subject to the Act because they do not relate to university business and "instead relate to the personal thoughts and opinions of individuals, the majority of whom are not employees of the [u]niversity." However, we note the e-mails at issue were sent between members of the university's athletic department and are in the possession of the university, which is a governmental body as defined by section 552.003. Additionally, we find these e-mails were collected, assembled, or maintained in connection with the transaction of the university's official business. Therefore, we conclude that the e-mails at issue are subject to the Act and must be released, unless the university demonstrates that the information falls within an exception to public disclosure under the Act. *See* Gov't Code §§ 552.006, .021, .301, .302.

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. Section 552.101 of the Government Code encompasses information protected by other statutes. Section 51.971 of the Education Code provides in relevant part the following:

> (a) In this section:
>
> > (1) "Compliance program" means a process to assess and ensure compliance by the officers and employees of an institution of higher education with applicable laws, rules, regulations, and policies, including matters of:
> >
> > > (A) ethics and standards of conduct;
> > >
> > > (B) financial reporting;

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[3]We assume that 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 that those records contain substantially different types of information than that submitted to this office.

> (C) internal accounting controls; or
>
> (D) auditing.
>
> (2) "Institution of higher education" has the meaning assigned by Section 61.003.
>
> . . .
>
> (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(a), (e)(1). You inform us the university is an institution of higher education for purposes of section 61.003 of the Education Code. *See id.* § 51.971(a)(2). You state a portion of the submitted information in Tab 5 consists of an ongoing compliance investigation of allegations of misconduct by an employee of the university. You also state the investigation was in response to allegations against a university employee and were initiated in order to assess and ensure compliance with all applicable laws, rules, regulations, and policies. Based on your representations, we find the information you have marked relates to an investigation conducted under the university's compliance program. *See id.* § 51.971(a)(1). You assert release of the information pertaining to the ongoing compliance investigation would interfere with that investigation. Accordingly, we conclude the university must withhold the information you have marked under section 552.101 of the Government Code in conjunction with section 51.971(e)(1) of the Education Code.

Section 552.101 also encompasses the doctrine of common-law privacy, which protects information if it (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be established. *Id.* at 681–82. The type of information considered highly intimate or embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. This office has found some kinds of medical information or information indicating disabilities or specific illnesses are excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). Upon review, we find the information you have marked in Tab 5 constitutes information that is highly intimate or embarrassing and of no legitimate concern to the public. Accordingly, the university must withhold the information you have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, the university must withhold the information you have marked under section 552.101 of the Government Code in conjunction with section 51.971(e)(1) of the Education Code, as well the information you have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

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,

Britni Fabian

Britni Fabian
Assistant Attorney General
Open Records Division

BF/dls

Ref: ID# 479609

Enc. Submitted documents

c: Requestor
(w/o enclosures)