ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 16, 2014

Ms. Ruth E. Shapiro
Senior Assistant General Counsel
Office of General Counsel
University of Houston System
311 East Cullen Building
Houston, Texas 77204-2028

OR2014-07736A

Dear Ms. Shapiro:

This office issued Open Records Letter No. 2014-07736 (2014) to the University of Houston (the "university") on May 7, 2014. The individuals whose privacy rights are implicated by the underlying request were sent notifications by the university under section 552.305 of the Government Code, which triggers the copying of the interested third parties on the issued open records letter ruling. *See* Gov't Code § 552.305; *cf. id.*, § 552.306(b). The copying of the third parties on the letter ruling identified the names of the individuals whose privacy interests formed the basis of our ruling in Open Records Letter No. 2014-07736. In order to maintain the confidentiality of the information deemed confidential-by-law in Open Records Letter No. 2014-07736, we must withdraw that ruling and replace it with a corrected ruling that takes into account the changed circumstances brought about by the section 552.305 notices to the affected individuals. Accordingly, this decision is substituted for Open Records Letter No. 2014-07736 and serves as the correct ruling. *See generally id.* § 552.011 (Office of Attorney General shall maintain uniformity in application, operation, and interpretation of Public Information Act (the "Act"), chapter 552 of the Government Code, and may issue decisions accordingly). This ruling was assigned ID# 522106.

The university received a request for the Law School Admission Test scores of specified university applicants.[1] You state the university has redacted student-identifying information

[1]We note the university sought and received clarification from the requestor regarding the request. *See* Gov't Code § 552.222(b) (stating if information requested is unclear to governmental body or if large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used); *see also City of Dallas v. Abbott*, 304 S.W.3d 380 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or over-broad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

pursuant to the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code.[2] You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code.[3] You inform us the release of the submitted information may implicate the privacy or proprietary interests of the specified individuals, The University of Texas System (the "system"), and The Law School Admissions Council ("LSAC"). *See id.* §§ 552.304 (interested party may submit comments stating why information should or should not be released), .305(d); *see also* Open Records Decision No. 542 (1990) (determining statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under Act in certain circumstances). We have received comments from one of the specified individuals, the system, and LSAC. We have considered the submitted arguments and reviewed the submitted information. We have also received and considered comments from the requestor. *See* Gov't Code § 552.304.

Initially, we note the submitted addresses are not responsive to the instant request. This ruling does not address the public availability of non-responsive information, and the university is not required to release non-responsive information in response to this request.

LSAC asserts the responsive information is excepted from disclosure pursuant to FERPA because it is personally identifiable information from an education record. "Education records" mean those records that contain information directly related to a student and are maintained by an educational agency or institution or by a person acting for such agency or institution. 20 U.S.C. § 1232g(a)(4)(A). A "student" is defined to include "any person with respect to whom an educational agency or institution maintains education records or personally identifiable information," but does not include a person who has not been in attendance at such agency or institution. *Id.* § 1232g(a)(6); *see also* 34 C.F.R. § 99.3. The university informs us the responsive information pertains to individuals who applied to, but did not attend, the university. Because the responsive information does not relate to students of the university, we find this information is not subject to FERPA.

Section 552.101 of the Government Code excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101.

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[2]The 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.

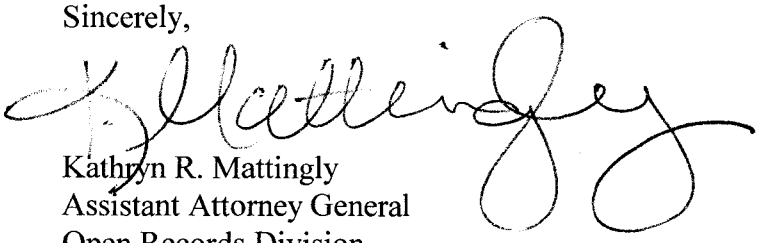
[3]The requestor alleges the university failed to comply with section 552.301 of the Government Code by failing to timely seek a ruling from this office regarding his written request for information. *See* Gov't Code § 552.301(b), (e). However, regardless of whether the university failed to comply with section 552.301, because the university's arguments under section 552.101 of the Government Code can provide a compelling reason for non-disclosure under section 552.302, we will address the university's arguments under that exception. *See* Open Records Decision No. 150 at 2 (1977).

Section 552.101 encompasses the doctrine of constitutional privacy. Constitutional privacy consists of two interrelated types of privacy: (1) the right to make certain kinds of decisions independently and (2) an individual's interest in avoiding disclosure of personal matters. Open Records Decision No. 455 at 4 (1987). The first type protects an individual's autonomy within "zones of privacy" which include matters related to marriage, procreation, contraception, family relationships, and child rearing and education. *Id.* The second type of constitutional privacy requires a balancing between the individual's privacy interests and the public's need to know information of public concern. *Id.* The scope of information protected is narrower than that under the common law doctrine of privacy; the information must concern the "most intimate aspects of human affairs." *Id.* at 5 (citing *Ramie v. City of Hedwig Village, Texas*, 765 F.2d 490 (5th Cir. 1985)). Upon review, we find the responsive information falls within the zones of privacy. Generally, only that information which identifies or tends to identify an individual would be protected under privacy doctrines. *Cf.* Open Records Decision No. 393 (1983) (governmental body required to withhold entire report under common-law privacy when identifying information was inextricably intertwined with other releaseable information). However, because of the identification of the names of the affected individuals brought about by the section 552.305 notices, the requestor knows the identities of the individuals whose privacy interests are at issue. Thus, in this instance, withholding only the identifying information of these individuals from the requestor would not preserve the individuals' privacy interests. Accordingly, the university must withhold the responsive information in its entirety under section 552.101 of the Government Code on the basis of constitutional privacy.[4]

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Kathryn R. Mattingly
Assistant Attorney General
Open Records Division
KRM/bhf

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[4]As our ruling is dispositive, we need not consider the remaining arguments against disclosure.

Ref: ID# 522106

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Parties
(w/o enclosures)