



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 3, 2014

Mr. R. Brooks Moore
Managing Counsel, Governance
Office of General Counsel
The Texas A&M University System
301 Tarrow Street, Sixth Floor
College Station, Texas 77840-7896

OR2014-17665

Dear Mr. Moore:

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# 538612 (TAMU 14-465 and 14-466).

Texas A&M University (the "university") received two requests from separate individuals for information regarding admission recommendations during a specified period.¹ The university will redact some information pursuant to the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code. We understand you to claim an exception to disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the information at issue.²

¹We note the university received clarification of the request in response to cost estimates provided to the requestors under section 552.2615 of the Government Code. *See* Gov't Code §§ 552.2615, .222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information). *See also* *City of Dallas v. Abbott*, 304 S.W.3d 380 (Tex. 2010) (holding when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for public information, the ten-business-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

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 that those records contain substantially different types of information than that submitted to this office.

Initially, we address your assertion the requested information was the subject to a previous request for information, as a result of which this office issued Open Records Letter No. 2014-15389 (2014). In that ruling, we determined the Texas A&M University System (the "system") must withhold certain information under section 552.101 of the Government Code in conjunction with constitutional privacy and under section 552.137 of the Government Code. Although you seek to rely on that prior ruling for this request, we note that request for information was sent to the system, which is a different governmental body than the university. Therefore, the university may not rely on our previous ruling to the system as a previous determination for any of the information at issue. *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).

However, we note a portion of the information at issue was the subject of another request for information sent to the university, in response to which this office issued Open Records Letter No. 2014-12292 (2014). In that ruling, we determined the university must withhold certain information under section 552.101 of the Government Code in conjunction with constitutional privacy. We have no indication there has been any change in the law, facts, or circumstances on which that previous ruling was based. Accordingly, to the extent the information at issue is identical to the information previously requested from the university and ruled upon by this office, we conclude the university must rely on Open Records Letter No. 2014-12292 as a previous determination and withhold or release the identical information in accordance with that ruling. *See* ORD 673. To the extent the information at issue is not encompassed by the previous ruling, we will address your argument against its release.

You seek to withhold identifying information of applicants to the university contained in the submitted records under section 552.101 of the Government Code in conjunction with constitutional privacy. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section 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 information we marked falls within the zones of privacy. Accordingly, the university must withhold the marked identifying information of applicants under section 552.101 of the Government Code in conjunction with constitutional privacy. However, we find you have failed to demonstrate how any portion of the remaining information you seek to withhold falls within the zones of constitutional privacy or implicates an individual's privacy interests for purposes of constitutional privacy. Therefore, the university may not withhold any of the remaining information you have marked under section 552.101 of the Government Code.

We note the remaining requested information contains e-mail addresses of members of the public that are subject to section 552.137 of the Government Code.³ Section 552.137 of the Government Code 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 e-mail addresses we have marked are not of the types specifically excluded by section 552.137(c). Accordingly, the university must withhold the e-mail addresses we marked under section 552.137 of the Government Code unless the owners of the addresses affirmatively consent to their release.

In summary, to the extent the information at issue is identical to the information previously requested from the university and ruled upon by this office, we conclude the university must rely on Open Records Letter No. 2014-12292 as a previous determination and withhold or release the identical information in accordance with that ruling. To the extent the information is not identical, the university must (1) withhold the identifying information of applicants, which we marked, under section 552.101 of the Government Code in conjunction with constitutional privacy; (2) withhold the e-mail addresses we marked under section 552.137 of the Government Code, unless the owners of the addresses affirmatively consent to their release; and (3) release the remaining information.

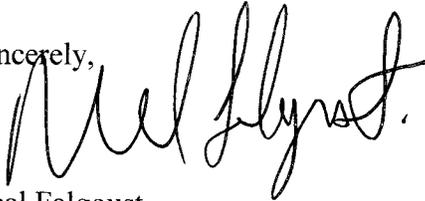
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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

³The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read "Neal Falgoust". The signature is written in a cursive, flowing style.

Neal Falgoust
Assistant Attorney General
Open Records Division

NF/bhf

Ref: ID# 538612

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)