



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 21, 2020

Mr. Renaldo Stowers
Senior Associate General Counsel
University of North Texas System
1155 Union Circle, #310907
Denton, Texas 76203-5017

OR2020-26502

Dear Mr. Stowers:

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# 848178 (UNT PIR No. 007886).

The University of North Texas (the "university") received a request for communications in the possession of the North Texas Daily containing specified terms. You state you have redacted student-identifying information from the submitted documents pursuant to the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code.¹ You claim the submitted information is not subject to the Act. Additionally, you claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have also received and considered comments from the Foundation for Individual Rights in Education and the Student Press Law Center (collectively, the "interested third parties"). See Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). We have

¹ 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: <https://www.texasattorneygeneral.gov/sites/default/files/files/divisions/open-government/20060725-USDOE-FERPA.pdf>.

considered the submitted arguments and reviewed the submitted representative sample of information.¹

The university and the interested third party assert the university's student newspaper is not a "governmental body" for purposes of the Act. However, we note that the request for information was submitted to the university, not the student newspaper. It is not disputed that the university is a governmental body for purposes of the Act. Thus, we will address whether the requested information is "public information" and thereby subject to the Act. Section 552.002(a) of the Government Code defines "public information" as information that is written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

- (1) by a governmental body;
- (2) for a governmental body and the governmental body:
 - (A) owns the information;
 - (B) has a right of access to the information; or
 - (C) spends or contributes public money for the purpose of writing, producing, collecting, assembling, or maintaining the information;or
- (3) by an individual officer or employee of a governmental body in the officer's or employee's official capacity and the information pertains to official business of the governmental body.

Id. § 552.002(a). You state the submitted communications were produced by student newspaper reporters. You explain the student newspaper is funded by student fees, advertising, and private donations, and "all of its content is by students." You further explain that "[a]ll of the individuals [who] manage the paper's day-to-day operations and who make content decisions are students[.]" Based on these representations and our review, we find the submitted communications were not written, produced, collected, assembled, or maintained by or for the university or by an individual officer or employee of the university in connection with the transaction of official business. *See id.*; *Yeo v. Town of Lexington*, 131 F.3d 241, 251-55 (1st Cir. 1997) (decision of school newspaper editors was not considered "state action" for purpose of section 1983 claim); *Sinn v. Daily Nebraskan*, 829 F.2d 662, 666 (8th Cir. 1987) (editorial decision by student editors did not constitute "state action"). Rather, it appears the information at issue was produced by private students for the student-run newspaper. Further, you state the university does not own or have a

¹ 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.

right of access to this information. Gov't Code § 552.002(a)(2). Consequently, we conclude that the submitted communications are not "public information" for the purpose of the Act and thus are not subject to required disclosure under the Act. *See id.* § 552.002(a); *Yeo*, 131 F.3d at 251-55; *Sinn*, 829 F.2d at 666. As we are able to make this determination, we need not consider the remaining arguments against disclosure.

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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,

Nicholas A. Ybarra
Assistant Attorney General
Open Records Division

NY/jxd

Ref: ID# 848178

Enc. Submitted documents

c: Requestor
(w/o enclosures)