



**UNIVERSITY OF HOUSTON SYSTEM
UNIVERSITY OF HOUSTON**

Office of the General Counsel

Eric D. Bentley
Assistant General Counsel
Office of the General Counsel
Telephone: 713-743-1849
Fax: 713-743-9179

August 14, 2007

VIA CERTIFIED MAIL

Nate Carlisle
Reporter
The Salt Lake Tribune
90 S. 400 West, Suite 700
Salt lake City, Utah 84101

Re: Texas Public Information Act request received on August 2, 2007

Dear Mr. Carlisle,

On August 2, 2007, the University of Houston (the "University") received your Texas Public Information Act request, wherein you requested the following information pertaining to the drug testing of student-athletes at the University's athletic department since January 1, 2004.

- Documentation or an accounting of all positive tests. This might include internal forms recording positive tests or an electronic spreadsheet or database.
- A calendar or other documentation indicating the frequency of drug tests administered to athletes.
- Records related to punishments levied for positive tests.
- The budget for an amount of money dedicated to drug testing for fiscal or calendar years, 2004, 2005, 2006, and 2007.
- Audits or reports discussing the drug testing of athletes, excluding standardized information provided by other government agencies or the NCAA.
- Contracts or agreements with vendors who have a role in drug testing athletes.
- All information provided by vendors the last time your institution put the drug testing of athletes up for bid or requested proposals.

Please find enclosed some of the information that is held by the University and is responsive to your request. Unfortunately, we are unable to provide you with some of the information you have requested. In this regard, some of the information you seek to obtain may lead to personally identifiable information (other than directory information) contained in a student's educational record. These educational records are protected by the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. §1232g, and are excepted from required public disclosure by § 552.101 of the Texas Government Code as "information considered confidential



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by law,” and/or in a “student record” under § 552.114(a). Consequently, some of the documents that are responsive to your request have been withheld and some of the enclosed documents are redacted to conceal any personally identifying information of a student’s educational record.

Additionally, and per our conversation today, please be advised that because third party proprietary interests have been implicated by aspects of your request, the University is prohibited from releasing some of the requested information until a decision has been rendered by the Texas Attorney General’s Office. A copy of the request for an opinion is enclosed. We have informed the interested third party that they have the right to present a legal argument to the Attorney General’s Office should they wish to prevent the public release of their information. A copy of that letter is also enclosed.

Should you have any questions, please do not hesitate to contact me.

Sincerely,



Eric D. Bentley

Enclosures

Cc: Dona G. Hamilton, General Counsel, UHS/UH
Jose M. Rangel, Deputy General Counsel, UHS/UH
Floyd Robinson, Director, UH Health Center
Dave Maggard, Director of Athletics, UH
John Robinson Jr., Senior Associate Athletic Director, UH
Maria Peden, Associate Athletic Director, UH
Mathilda Christophe, Assistant Athletic Director, Business Services, UH
Mike O’Shea, Head Athletic Trainer, UH
John Houston, Associate Athletic Trainer, UH



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August 14, 2007

VIA CERTIFIED MAIL

The Honorable Greg Abbott
Attorney General of Texas
209 W. 14th Street, 6th Floor
Austin, Texas 78701
(512) 463-2092 fax

Re: Texas Public Information Act Request From Nate Carlisle Received on August 2, 2007.

Dear Attorney General Abbott,

The University of Houston (the "University") requests an attorney general decision concerning whether certain information is subject to public disclosure under the Texas Public Information Act (the "Act"). On August 2, 2007, the University received a request from Nate Carlisle, wherein he requested the following information pertaining to the drug testing of student-athletes at the University's athletic department since January 1, 2004:

- Documentation or an accounting of all positive tests. This might include internal forms recording positive tests or an electronic spreadsheet or database.
- A calendar or other documentation indicating the frequency of drug tests administered to athletes.
- Records related to punishments levied for positive tests.
- The budget for an amount of money dedicated to drug testing for fiscal or calendar years, 2004, 2005, 2006, and 2007.
- Audits or reports discussing the drug testing of athletes, excluding standardized information provided by other government agencies or the NCAA.
- Contracts or agreements with vendors who have a role in drug testing athletes.



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- All information provided by vendors the last time your institution put the drug testing of athletes up for bid or requested proposals.

A copy of the request is enclosed as **Exhibit 1**.

Student Information

Some of the information that is held by the University and is responsive to Mr. Carlisle's request contains, in part, personally identifiable nondirectory information that is contained in a student's educational record, as defined by the Family Educational Rights and Privacy Act ("FERPA"). As a result, without a signed release from the students whose information is contained in the responsive documents, FERPA would prohibit the University from releasing such information to Mr. Carlisle in response to his Texas Public Information Act request.

According to Texas Government Code § 552.026, the Texas Public Information Act "...does not require the release of information contained in education records of an educational agency or institution, except in conformity with [FERPA]." Texas Government Code § 552.026. In Open Records Decision No. 634 (1995), your office analyzed § 552.026, and determined, "An educational agency or institution may withhold from public disclosure personally identifiable information in 'education records' as defined by [FERPA], which information is excepted from public disclosure by Government Code section 552.026, without the necessity of requesting an attorney general decision as to that exception." See Tex. Atty. Gen. Op. No. 634 (1995). Consequently, the University has determined the information that is protected by FERPA, and will not request a decision from your office with regard to such information.

With the exception of any FERPA protected information and any third party information (which will be discussed below), on August 14, 2007, the University provided Mr. Carlisle with the information that is held by the University and that is responsive to his request. A copy of this letter is enclosed as **Exhibit 2**.

Third Party Information

The University does not assert any exceptions; however, because third party proprietary interests have been implicated by aspects of this request, the University has declined to release the information to allow the interested third party an opportunity to submit in writing to your office the reasons why the information should be withheld. A copy of the information that is responsive to the aspects of the request that implicate third party interests is enclosed as **Exhibit 3**.

Pursuant to § 552.305 of the Texas Government Code, the University notified the interested party of this request for an attorney general decision, and sent the "notice statement to persons whose proprietary information is requested" to them. The interested party was informed that they are entitled to submit a letter to your office within 10

business days, which provides why the information should be withheld. A copy of the notice is enclosed as **Exhibit 4**.

Pursuant to section 552.301(d) of the Texas Government Code, the requestor has been notified and provided a copy of this request for an attorney general decision via certified mail. A copy of the notice is enclosed as **Exhibit 2**.

Please let me know if you have any questions or need any additional information.

Sincerely,

A handwritten signature in black ink, appearing to read "Eric D. Bentley", with a long horizontal flourish extending to the right.

Eric D. Bentley

Enclosures



UNIVERSITY OF HOUSTON SYSTEM
UNIVERSITY OF HOUSTON

Eric D. Bentley
Assistant General Counsel
Office of the General Counsel
Telephone: 713-743-1849
Fax: 713-743-9179

Office of the General Counsel

August 14, 2007

VIA CERTIFIED MAIL

Re: Texas Public Information Act Request From Nate Carlisle Received on August 2, 2007.

To Whom It May Concern:

We have received a formal request to inspect or copy some of our files. A copy of the request for information is enclosed. The requested files include records we have concerning your company. The Office of the Attorney General is reviewing this matter, and they will issue a decision on whether Texas law requires us to release your records. Generally, the Public Information Act (the "Act") requires the release of requested information, but there are exceptions. As described below, you have the right to object to the release of your records by submitting written arguments to the attorney general that one or more exceptions apply to your records. You are not required to submit arguments to the attorney general, but if you decide not to submit arguments, the Office of the Attorney General will presume that you have no interest in withholding your records from disclosure. In other words, if you fail to take timely action, the attorney general will more than likely rule that your records must be released to the public. If you decide to submit arguments, **you must do so not later than the tenth business day after the date you receive this notice.**

If you submit arguments to the attorney general, you must:

- a) identify the legal exceptions that apply,
- b) identify the specific parts of each document that are covered by each exception, and
- c) explain why each exception applies. Gov't Code § 552.305(d).

A claim that an exception applies without further explanation will not suffice. Attorney General Opinion H-436. You may contact this office to review the information at issue in order to make your arguments. We will provide the attorney general with a copy of the request for information and a copy of the requested information, along with



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other material required by the Act. The attorney general is generally required to issue a decision within 45 working days.

Please send your written comments to the Office of the Attorney General at the following address:

Office of the Attorney General
Open Records Division
P.O. Box 12548
Austin, Texas 78711-2548

In addition, you are required to provide the requestor with a copy of your communication to the Office of the Attorney General. Gov't Code § 552.305(e). You may redact the requestor's copy of your communication to the extent it contains the substance of the requested information. Gov't Code § 552.305(e).

Commonly Raised Exceptions

In order for a governmental body to withhold requested information, specific tests or factors for the applicability of a claimed exception must be met. Failure to meet these tests may result in the release of requested information. We have listed the most commonly-claimed exceptions in the Government Code concerning proprietary information and the leading cases or decisions discussing them. This listing is not intended to limit any exceptions or statutes you may raise.

Section 552.101: Information Made Confidential by Law

Open Records Decision No. 652 (1997).

Section 552.110: Trade Secrets and Commercial or Financial Information

Trade Secrets:

In re Bass, 113 S.W.3d 735 (Tex. 2003).

Hyde Corp. v. Huffines, 314 S.W.2d 763, 776 (Tex.), *cert. denied*, 358 U.S. 898 (1958).

Open Records Decision No. 552 (1990).

Commercial or Financial Information:

The commercial or financial information prong of section 552.110 was amended by the Seventy-sixth Legislature. The amendment became effective September 1, 1999. At the time of publication of this form, there were no cases or opinions construing the amended provision. *Birnbaum v. Alliance of Am. Insurers*, 994 S.W.2d 766 (Tex. App.--Austin 1999, pet. filed) (construing previous version of section 552.110), *abrogated by In re Bass*, 113 S.W.3d 735 (Tex. 2003). *Nat'l Parks & Conservation Ass'n v. Morton*, 498 F.2d 765 (D.C. Cir. 1974). Open Records Decision No. 639 (1996).

Section 552.113: Geological or Geophysical Information

Open Records Decision No. 627 (1994).

Section 552.131: Economic Development Negotiation Information

If you have questions about this notice or release of information under the Act, please refer to the Public Information Handbook published by the Office of the Attorney General, or contact the attorney general's Open Government Hotline at (512) 478-OPEN (6736) or toll-free at (877) 673-6839 (877-OPEN TEX). To obtain copies of the Public Information Handbook or Attorney General Opinions, including those listed above, please visit the attorney general's website at <http://www.oag.state.tx.us> or call the attorney general's Opinions Library at (512) 936-1730.

Sincerely,

A handwritten signature in black ink, appearing to read "Eric D. Bentley", with a stylized flourish at the end.

Eric D. Bentley

Enclosure: Copy of request for information



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 23, 2007

Mr. Eric D. Bentley
Assistant General Counsel
University of Houston System
311 East Cullen Building, Suite 311
Houston, Texas 77204-2028

OR2007-13820

Dear Mr. Bentley:

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# 292668.

The University of Houston (the "university") received a request for seven categories of information pertaining to the drug testing of student athletes. You state that you have released some of the responsive information with redactions pursuant to the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232(a). You do not take a position as to whether the submitted information is excepted under the Act; however, you state, and provide documentation showing, that you notified Aegis Analytical Laboratories ("Aegis") of the university's receipt of the request for information and of Aegis's right to submit arguments to this office as to why the submitted information should not be released to the requestor. *See* Gov't Code 552.305(d); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have reviewed the submitted information.

We note that an interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this decision, Aegis has not submitted to this office any reasons explaining why the submitted information should not be released. We

sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Office of the Attorney General at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Jonathan Miles
Assistant Attorney General
Open Records Division

JM/jh

Ref: ID# 292688

Enc. Submitted documents

c: Mr. Nate Carlisle
The Salt Lake City Tribune
90 S. 400 West, Suite 700
Salt Lake City, Utah 84101
(w/o enclosures)

Aegis Analytical Laboratories
345 Hill Avenue
Nashville, Tennessee 37210
(w/o enclosures)



UNIVERSITY OF HOUSTON SYSTEM
UNIVERSITY OF HOUSTON

Eric D. Bentley
Assistant General Counsel
Office of the General Counsel
Telephone: 713-743-1849
Fax: 713-743-9179

Office of the General Counsel

October 25, 2007

Nate Carlisle
Reporter
The Salt Lake Tribune
90 S. 400 West, Suite 700
Salt lake City, Utah 84101

Re: Texas Public Information Act request received on August 2, 2007

Dear Mr. Carlisle,

On August 2, 2007, the University of Houston (the "University") received your Texas Public Information Act request, wherein you requested information pertaining to the drug testing of student-athletes at the University's athletic department since January 1, 2004.

On August 14, 2007, I provided you with some of the information that is responsive to your request. On that date, I also informed the relevant third party that they have the right to present a legal argument to the Office of the Attorney General ("OAG") should they wish to prevent the public release of their information. Per the enclosed letter from the OAG, the OAG did not receive a response from the relevant third party. Consequently, the OAG determined that the enclosed information, which is responsive to part of your request, must be released to you.

In providing you with the enclosed information, the University has fulfilled its obligations under the Texas Public Information Act, and we now consider this matter closed. Should you have any questions, please do not hesitate to contact me.

Sincerely,

Eric D. Bentley

Enclosures



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ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

OFFICE OF THE
GENERAL COUNSEL
UNIVERSITY OF HOUSTON SYSTEM

2007 OCT 24 AM 10:55

October 23, 2007

Mr. Eric D. Bentley
Assistant General Counsel
University of Houston System
311 East Cullen Building, Suite 311
Houston, Texas 77204-2028

OR2007-13820

Dear Mr. Bentley:

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# 292668.

The University of Houston (the "university") received a request for seven categories of information pertaining to the drug testing of student athletes. You state that you have released some of the responsive information with redactions pursuant to the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232(a). You do not take a position as to whether the submitted information is excepted under the Act; however, you state, and provide documentation showing, that you notified Aegis Analytical Laboratories ("Aegis") of the university's receipt of the request for information and of Aegis's right to submit arguments to this office as to why the submitted information should not be released to the requestor. *See* Gov't Code 552.305(d); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have reviewed the submitted information.

We note that an interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this decision, Aegis has not submitted to this office any reasons explaining why the submitted information should not be released. We

thus have no basis for concluding that any portion of the submitted information constitutes the proprietary information of Aegis. *See* Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3 (1990). Accordingly, we conclude that the university may not withhold any portion of the submitted information on the basis of any proprietary interest Aegis may have in the information. As you raise no exceptions to disclosure, the submitted information must be released to the requestor.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be

sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Office of the Attorney General at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Jonathan Miles
Assistant Attorney General
Open Records Division

JM/jh

Ref: ID# 292688

Enc. Submitted documents

c: Mr. Nate Carlisle
The Salt Lake City Tribune
90 S. 400 West, Suite 700
Salt Lake City, Utah 84101
(w/o enclosures)

Aegis Analytical Laboratories
345 Hill Avenue
Nashville, Tennessee 37210
(w/o enclosures)