



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 1, 2015

Ms. Claudene Marshall
Assistant General Counsel
Office of General Counsel
The Texas A&M University System
301 Tarrow Street, 6th Floor
College Station, Texas 77840-7896

OR2015-08453

Dear Ms. Marshall:

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# 562011 (PIR# 15-120).

The Texas A&M University System (the "system") received a request for the final report related to a grievance filed by the requestor. You indicate the system is withholding some information pursuant to the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code.¹ You claim some of the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

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

¹The 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>.

Code § 552.101. This section encompasses information protected by other statutes, including section 51.971 of the Education Code. Section 51.971 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;
- (C) internal accounting controls; or
- (D) auditing.

(2) “Institution of higher education” has the meaning assigned by Section 61.003.

...

(c) The following are confidential:

(1) information that directly or indirectly reveals the identity of an individual who made a report to the compliance program office of an institution of higher education, sought guidance from the office, or participated in an investigation conducted under the compliance program; and

(2) information that directly or indirectly reveals the identity of an individual as a person who is alleged to have or may have planned, initiated, or participated in activities that are the subject of a report made to the compliance program office of an institution of higher education if, after completing an investigation, the office determines the report to be unsubstantiated or without merit.

(d) Subsection (c) does not apply to information related to an individual who consents to disclosure of the information.

Educ. Code § 51.971(a), (c)-(d). We understand the system is an institution of higher education for purposes of section 61.003 of the Education Code. *See id.* § 51.971(a)(2). The submitted information consists of a completed investigation you indicate was initiated in response to a claim of discrimination and creation of a hostile work environment. You state the investigation was undertaken by administrators who are part of the system's compliance program. Accordingly, we agree the submitted information pertains to the system's compliance program for the purposes of section 51.971. *See id.* § 51.971(a).

You claim portions of the submitted information are subject to section 51.971(c). Section 51.971(c)(1) makes confidential information that identifies individuals as complainants, as having sought guidance from a compliance program, or as participants in an investigation conducted under a compliance program. *Id.* § 51.971(c)(1). Section 51.971(c)(2) makes confidential information that identifies individuals alleged to have committed the activities that are the subject of a complaint made to a compliance program office if the office determines the report is unsubstantiated. *Id.* § 51.971(c)(2). However, as you acknowledge, subsection (c) does not apply to information related to an individual who consents to disclosure of the information. *Id.* § 51.971(d). You state the investigation at issue concluded in a determination that certain allegations concerning the subject of the complaint were without merit. Upon review, we agree portions of the submitted information identify individuals as participants in the compliance program investigation or an individual alleged to have committed the activity that is the subject of the unsubstantiated complaint. We understand these individuals have not consented to release of their information. However, as you also acknowledge, the requestor is the complainant at issue. Thus, pursuant to section 51.971(d), we find the requestor has a right of access to her information and it may not be withheld under section 51.971(c)(1). *Cf.* Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). Accordingly, we find the system must withhold the information you have marked, and the additional information we have marked, under section 552.101 in conjunction with section 51.971(c). As you raise no exceptions to disclosure for the remaining information, it must be released at this time.²

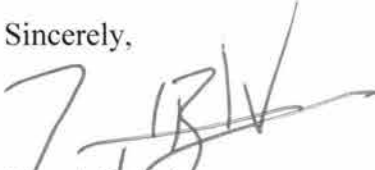
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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/>

²Because the requestor has a special right of access to some of the information being released, the system should again seek a decision from this office if it receives another request for this particular information from a different requestor.

[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,

A handwritten signature in black ink, appearing to read 'J. Behnke', with a long horizontal stroke extending to the right.

Joseph Behnke
Assistant Attorney General
Open Records Division

JB/som

Ref: ID# 562011

Enc. Submitted documents

c: Requestor
(w/o enclosures)