



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

July 13, 2015

Mr. R. Brooks Moore  
Managing Counsel, Governance  
The Texas A&M University System  
Office of General Counsel  
301 Tarrow Street, 6<sup>th</sup> Floor  
College Station, Texas 77840-7896

OR2015-14098

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# 571924 (20150428).

Texas A&M University-Commerce (the "university") received a request for certain information related to the dismissal of the requestor from the university's alternate certification program. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.103 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the submitted information contains completed investigations and evaluations subject to section 552.022 of the Government Code. Section 552.022(a)(1) provides for the required public disclosure of "a completed report, audit, evaluation, or investigation made of, for, or by a governmental body," unless it is excepted by section 552.108 of the Government Code or made confidential under the Act or other law. Gov't Code § 552.022(a)(1). Although you raise section 552.103 for this information, this section is a discretionary exception to disclosure and does not make information confidential under the Act. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive Gov't Code § 552.103); *see also* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions). Thus, the

university may not withhold the completed investigations or evaluations under section 552.103 of the Government Code. However, because section 552.101 makes information confidential under the Act, we will address your argument under this section for the information subject to section 552.022. We will also address your arguments against disclosure for the information not subject to section 552.022.

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 Code § 552.101. This section encompasses information protected by other statutes, including section 51.971 of the Education Code. Section 51.971 of the Education Code provides, in relevant part, the following:

(e) Information is excepted from disclosure under [the Act] if it is collected or produced:

(1) in a compliance program investigation and releasing the information would interfere with an ongoing compliance investigation[.]

Educ. Code § 51.971(e)(1). Section 51.971 defines a compliance program as “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[.]” *Id.* § 51.971(a)(1). We note the university is an institution of higher education for purposes of section 61.003 of the Education Code. *See id.* § 51.971(a)(2). You assert the submitted information pertains to four separate complaints the requestor has submitted to the university alleging breaches of standards and ethics. Based on your representations and our review, we agree the submitted information pertains to the university’s compliance program for purposes of section 51.971. *See id.* § 51.971(a). You state three of the complaints have been investigated by the university’s compliance program. You state the fourth complaint relates to the prior three complaints. You inform this office the fourth complaint is currently being investigated by the university’s compliance program, and release of any portion of the submitted information at this time would interfere with the pending investigation. Accordingly, we conclude the university must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 51.971(e)(1) of the Education Code.<sup>1</sup>

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.

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<sup>1</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

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](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,



Joseph Keeney  
Assistant Attorney General  
Open Records Division

JDK/eb

Ref: ID# 571924

Enc. Submitted documents

c: Requestor  
(w/o enclosures)