



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

December 1, 2015

Ms. Cynthia Tynan  
Attorney and Public Information Coordinator  
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The University of Texas System  
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Austin, Texas 78701-2902

Ms. Jennifer Burnett  
Office of the General Counsel  
The University of Texas System  
201 West Seventh Street  
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OR2015-25026

Dear Ms. Tynan and Ms. Burnett:

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# 589529 (OGC# 164446).

The University of Texas Medical Branch at Galveston (the "university") received a request for information pertaining to a specified complaint. You state the university has released some responsive information. You claim some of the submitted information is excepted from disclosure under sections 552.101 and 552.107 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also received and considered comments submitted by the requestor. *See* Gov't Code § 552.304 (interested party may submit written comments stating why information should or should not be released).

Initially, we note the submitted information is subject to section 552.022 of the Government Code. Section 552.022(a) provides, in relevant part, the following:

(a) [T]he following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

*Id.* § 552.022(a)(1). The submitted information is part of a completed investigation that is subject to section 552.022(a)(1). Thus, the university must release this information pursuant to section 552.022(a)(1), unless it is excepted from disclosure under section 552.108 of the Government Code or expressly made confidential under the Act or other law. *See id.* Although you raise section 552.107 of the Government Code for some of this information, section 552.107 is discretionary in nature and does not make information confidential under the Act. *See* Open Records Decision Nos. 676 at 10-11 (2002) (governmental body may waive attorney-client privilege under section 552.107(1)), 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions). Therefore, the university may not withhold any of the information at issue under section 552.107. However, the Texas Supreme Court has held the Texas Rules of Evidence are “other law” that make information expressly confidential for purposes of section 552.022. *In re City of Georgetown*, 53 S.W.3d 328, 336 (Tex. 2001). Thus, we will consider your assertion of the attorney-client privilege under Texas Rule of Evidence 503 for the information at issue. Additionally, you raise section 552.101 of the Government Code for the submitted information. Because section 552.101 can make information confidential for purposes of section 552.022, we will consider the applicability of section 552.101 to 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 Code § 552.101. This section encompasses information protected by other statutes, such as section 51.971 of the Education Code, which 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). You inform us 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 inform us the submitted information relates to an investigation that was undertaken by the university's Correctional Managed Care Department. You state the investigation was conducted in response to allegations of university employee misconduct and was initiated in order to assess and ensure compliance with all applicable laws, rules, regulations, and policies. Based on your representations, we find this information relates to an investigation conducted under the university's compliance program. *See id.* § 51.971(a)(1).

You state the information at issue relates to a concluded compliance matter. You state the claims to which the information at issue pertains were determined to be substantiated. You inform us only a small subset of individuals were involved in the investigation at issue. You explain the requestor was a party to the incidents at issue and has specific knowledge of the incidents. You further explain release of the information at issue would directly or indirectly reveal the identities of those individuals who participated in the investigation. You inform us none of these individuals have consented to release of their information. Upon review, we agree release of the documents at issue would directly or indirectly identify individuals as complainants or as participants in the compliance program investigation. *See id.* § 51.971(c)(1). However, we note the requestor is one of the individuals whose information is subject to section 51.971(c). Pursuant to section 51.971(d), we find the information pertaining solely to the requestor is not confidential with respect to the requestor and, thus, may not be withheld from him under section 552.101 in conjunction with section 51.971(c). *Cf.* Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). Accordingly, with the exception of the information pertaining solely to the requestor, which we have marked, the university must

withhold the information you have marked under section 552.101 of the Government Code in conjunction with section 51.971(c)(1) of the Education Code.<sup>1</sup>

You claim the attorney-client privilege for some of the information pertaining solely to the requestor. Texas Rule of Evidence 503(b)(1) provides the following:

A client has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made to facilitate the rendition of professional legal services to the client:

(A) between the client or the client's representative and the client's lawyer or the lawyer's representative;

(B) between the client's lawyer and the lawyer's representative;

(C) by the client, the client's representative, the client's lawyer, or the lawyer's representative to a lawyer representing another party in a pending action or that lawyer's representative, if the communications concern a matter of common interest in the pending action;

(D) between the client's representatives or between the client and the client's representative; or

(E) among lawyers and their representatives representing the same client.

Tex. R. Evid. 503(b)(1). A communication is "confidential" if not intended to be disclosed to third persons other than those to whom disclosure is made to further the rendition of professional legal services to the client or reasonably necessary to transmit the communication. *Id.* 503(a)(5).

Accordingly, in order to withhold attorney-client privileged information from disclosure under Rule 503, a governmental body must 1) show that the document is a communication transmitted between privileged parties or reveals a confidential communication; 2) identify the parties involved in the communication; and 3) show that the communication is confidential by explaining that it was not intended to be disclosed to third persons and that it was made in furtherance of the rendition of professional legal services to the client. *See* Open Records Decision No. 676 (2002). Upon a demonstration of all three factors, the entire communication is confidential under Rule 503 provided the client has not waived the privilege or the communication does not fall within the purview of the exceptions to the

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<sup>1</sup>As our ruling is dispositive, we do not address your other argument to withhold this information.

privilege enumerated in Rule 503(d). *Huie v. DeShazo*, 922 S.W.2d 920, 923 (Tex. 1996) (privilege extends to entire communication, including facts contained therein); *In re Valero Energy Corp.*, 973 S.W.2d 453, 457 (Tex. App.—Houston [14<sup>th</sup> Dist.] 1998, orig. proceeding) (privilege attaches to complete communication, including factual information).

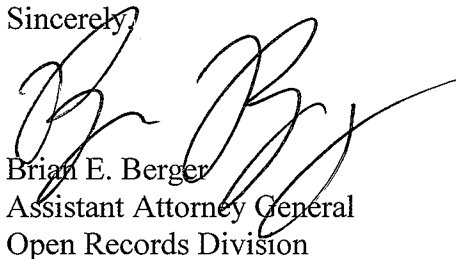
You state the information at issue consists of an attachment to an e-mail involving university attorneys. You further state the communication was made for the purpose of facilitating the rendition of professional legal services to the university and this communication has remained confidential. Upon review, we find you have established the information at issue constitutes an attorney-client communication under rule 503. Thus, the university may withhold the information we have marked under Texas Rule of Evidence 503.

In summary, with the exception of the information pertaining solely to the requestor, which we have marked, the university must withhold the information you have marked under section 552.101 of the Government Code in conjunction with section 51.971(c)(1) of the Education Code. The university may withhold the information we have marked under Texas Rule of Evidence 503. The remaining information must be released.<sup>2</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.

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,



Brian E. Berger  
Assistant Attorney General  
Open Records Division

BB/akg

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<sup>2</sup>Although the information being released is not confidential with respect to the requestor, we note it may be confidential with respect to the general public. Thus, if the university receives another request for this same information from a different requestor, then it must again seek a ruling from this office.

Ref: ID# 589529

Enc. Submitted documents

c: Requestor  
(w/o enclosures)