



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 29, 2016

Ms. Jennifer Burnett
Attorney & Public Information Coordinator
Office of General Counsel
The University of Texas System
201 West 7th Street, Suite 600
Austin, Texas 78701-2901

OR2016-26396

Dear 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# 635596 (OGC# 171833).

The University of Texas Medical Branch at Galveston (the "university") received a request for information pertaining to complaints filed by a named individual and investigations involving the named individual, including specified interview notes and a specified tape recording. You state the university has released some information to the requestor. You also state the university does not have any responsive information to the portion of the request seeking the specified tape recording. You claim some of the submitted information is excepted from disclosure under sections 552.101, 552.117, and 552.1235 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

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

¹We assume that 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 that those records contain substantially different types of information than that submitted to this office.

Code § 552.101. Section 552.101 encompasses confidentiality provisions such as section 161.032 of the Health and Safety Code, which provides in relevant part:

(c) Records, information, or reports of a . . . compliance officer and records, information, or reports provided by a . . . compliance officer to the governing body of a public hospital, hospital district, or hospital authority are not subject to disclosure under [the Act].

...

(e) The records, information, and reports received or maintained by a compliance officer retain the protection provided by this section only if the records, information, or reports are received, created, or maintained in the exercise of a proper function of the compliance officer as provided by the Office of Inspector General of the United States Department of Health and Human Services.

(f) This section . . . do[es] not apply to records made or maintained in the regular course of business by a hospital, . . . university medical center or health science center, [or] hospital district[.]

Health & Safety Code § 161.032(c), (e), (f). You inform us some of the submitted information, which you have marked, relates to complaints that were directed to the university's Office of Institutional Compliance ("OIC") and reviewed by the university's compliance officers. You state the OIC initiated investigations of the complaints pursuant to the university's compliance program. You explain the information at issue was created for and is part of the compliance file for the complaints at issue and is not maintained in the regular course of business. *Cf. Texarkana Mem'l Hosp., Inc. v. Jones*, 551 S.W.2d 33, 35 (Tex. 1977) (defining records made or maintained in regular course of business). Based on your representations and our review, we conclude the information at issue consists of records, information, or reports of a compliance officer acting under subchapter D of chapter 161 of the Health and Safety Code. Therefore, the university must withhold the information you marked under section 552.101 of the Government Code in conjunction with section 161.032 of the Health and Safety Code.

Section 552.101 of the Government Code also 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 also state the submitted information relates, in part, to completed investigations of allegations of misconduct and retaliation conducted by the university's Department of Human Resources or Department of Internal Investigations. You inform us the university conducts an internal review process to assess and ultimately ensure the university complies with all applicable laws, rules, regulations and policies. Thus, we agree the submitted information pertains to the university's compliance program for the purposes of section 51.971 of the Education Code. *See id.* § 51.971(a).

You seek to withhold the information relating to the completed compliance investigations in its entirety. You claim only a small subset of individuals were involved in the investigations. You state the requestor was a party to the incidents at issue and has specific knowledge of the incidents. Further, you inform us the completed compliance investigations found the allegations were, in part, unsubstantiated or without merit. Accordingly, you assert release of the information at issue would directly or indirectly reveal the identities of individuals who participated in the compliance program investigations, and could subject these individuals to harassment or retaliation by other employees of the university because the requestor has detailed knowledge of the alleged incidents at issue. 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 participants in the compliance program investigations, or as an individual alleged to have planned, initiated, or participated in the activities at issue that are the subject to the unsubstantiated allegations. *See id.* § 51.971(c). However, we note, and you acknowledge, the requestor is one of the individuals whose information is subject to section 51.971(c) of the Education Code. Thus, pursuant to section 51.971(d), we find the requestor has a right of access to information pertaining solely to himself, and such information, which we have marked for release, may not be withheld from him under section 552.101 of the Government Code 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 we marked for release, the university must withhold the information you marked under section 552.101 in conjunction with section 51.971(c).²

Additionally, section 51.971 of the Education Code provides:

(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). You inform us some of the submitted information pertains to an ongoing compliance investigation by the university's Department of Internal Investigations relating to ethical questions and standards of conduct of a university employee. Based on your representations and our review, we agree the information at issue pertains to the university's compliance program for purposes of section 51.971. *See id.* § 51.971(a). You also assert release of the information at this time would interfere with, and potentially compromise, the ongoing investigation. Accordingly, we conclude the university must

²As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

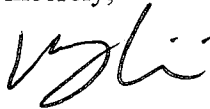
withhold the information you marked under section 552.101 of the Government Code in conjunction with section 51.971(e)(1) of the Education Code.³

In summary, the university must withhold the information you marked under section 552.101 of the Government Code in conjunction with section 161.032 of the Health and Safety Code. With the exception of the information we marked for release, the university must withhold the information you marked under section 552.101 in conjunction with section 51.971(c). The university must withhold the information you marked under section 552.101 of the Government Code in conjunction with section 51.971(e)(1) of the Education Code.

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, 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,



Kieran Hillis
Assistant Attorney General
Open Records Division

KH/akg

Ref: ID# 635596

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.