



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

December 13, 2016

Ms. Ana Vieira Ayala  
Assistant General Counsel & Public Information Coordinator  
Office of General Counsel  
The University of Texas System  
201 West 7th Street, Suite 600  
Austin, Texas 78701-2901

OR2016-27572

Dear Ms. Ayala:

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# 637552 (OGC# 172072).

The University of Texas Medical Branch at Galveston (the "university") received a request for information pertaining to the requestor's leave, including documents, forms, and communications between named individuals. You claim 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 representative sample of information.<sup>1</sup>

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 of the Government Code encompasses the Family and Medical Leave Act (the "FMLA"). *See* 29 U.S.C. §§ 2601 *et seq.* Section 825.500 of

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<sup>1</sup>We 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.

chapter V of title 29 of the Code of Federal Regulations identifies the record-keeping requirements for employers that are subject to the FMLA. Subsection (g) of section 825.500 states:

[r]ecords and documents relating to medical certifications, recertifications or medical histories of employees or employees' family members, created for purposes of FMLA, shall be maintained as confidential medical records in separate files/records from the usual personnel files. . . . If the [Americans with Disabilities Act (the "ADA")], as amended, is also applicable, such records shall be maintained in conformance with ADA confidentiality requirements . . . , except that:

- (1) Supervisors and managers may be informed regarding necessary restrictions on the work or duties of an employee and necessary accommodations;
- (2) First aid and safety personnel may be informed (when appropriate) if the employee's physical or medical condition might require emergency treatment; and
- (3) Government officials investigating compliance with FMLA (or other pertinent law) shall be provided relevant information upon request.

29 C.F.R. § 825.500(g). You assert the submitted information consists of medical histories and other information created for the purposes of the FMLA. You further assert none of the release provisions of the FMLA apply to this information. Based on your representations and our review, we find the submitted information is confidential under section 825.500 of title 29 of the Code of Federal Regulations. Accordingly, the university must withhold the submitted information under section 552.101 of the Government Code in conjunction with the FMLA.<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/>

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<sup>2</sup>As our ruling is dispositive, we need not address your remaining arguments against disclosure of the submitted information.

[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 'KH', with a horizontal line extending from the end of the signature.

Kieran Hillis  
Assistant Attorney General  
Open Records Division

KH/akg

Ref: ID# 637552

Enc. Submitted documents

c: Requestor  
(w/o enclosures)