



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 15, 2017

Ms. Jennifer Burnett
Attorney & Public Information Coordinator
Office of General Counsel
The University of Texas System
201 West Seventh Street, Suite 600
Austin, Texas 78701-2902

OR2017-05395

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# 648976 (OGC# 173103).

The University of Texas Rio Grande Valley (the "university") received a request for ten different categories of information pertaining to the requestor's client during a specified time period. You inform us you will redact certain information pursuant to sections 552.130©, 552.136(c), and 552.147(b) of the Government Code, as well as Open Records Decision No. 684 (2009), and the previous determination issued to the university in Open Records Letter No. 2016-16872 (2016).¹ You assert some of the submitted information is not subject

¹Section 552.130(c) of the Government Code allows a governmental body to redact the information described in section 552.130(a) without the necessity of seeking a decision from the attorney general. Gov't Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e). Section 552.136(c) of the Government Code authorizes a governmental body to redact, without the necessity of requesting a decision from this office, the information described in section 552.136(b). *Id.* § 552.136(c); *see also id.* § 552.136(d)-(e) (requestor may appeal governmental body's decision to withhold information under section 552.136(c) to attorney general and governmental body withholding information pursuant to section 552.136(c) must provide certain notice to requestor). Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. *Id.* § 552.147(b). Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold specific categories of information without the necessity of requesting an attorney general decision. Open Records Letter No. 2016-16872 authorized the university to withhold dates of birth of members of the public under section 552.101 of the Government Code in conjunction with common-law privacy without the necessity of requesting an attorney general's decision.

to the Act. Additionally, you claim the submitted information is excepted from disclosure under sections 552.101, 552.103, and 552.108 of the Government Code. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note the information we have marked is not responsive to the instant request because it does not pertain to the time period specified in the request. This ruling does not address the public availability of any information that is not responsive to the request and the university is not required to release such information in response to this request.

Next, you assert the University of Texas Electronic Identification Numbers (“UTEIDs”) contained in the submitted documents are not subject to the Act. The Act applies only to “public information.” *See* Gov’t Code § 552.021. Section 552.002(a) defines “public information” as:

[I]nformation that is written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

(1) by a governmental body;

(2) for a governmental body and the governmental body:

(A) owns the information;

(B) has a right of access to the information; or

(C) spends or contributes public money for the purpose of writing, producing, collecting, assembling, or maintaining the information; or

(3) by an individual officer or employee of a governmental body in the officer’s or employee’s official capacity and the information pertains to official business of the governmental body.

Id. § 552.002(a). In Open Records Decision No. 581 (1990), this office determined certain computer information, such as source codes, documentation information, and other computer programming, that has no significance other than its use as a tool for the maintenance, manipulation, or protection of public property is not the kind of information made public under section 552.021 of the Government Code. You inform our office that when combined with an individual’s password, a UTEID serves as the required log-on protocol to access the computer mainframe, which is the university’s centralized hub that runs all its high-level electronic functions. You indicate the UTEIDs are used solely to access the university’s computer mainframe and they have no other significance other than their use as tools for the maintenance, manipulation, or protection of public information. Based on your representations and our review, we find the UTEIDs contained in the submitted documents

do not constitute public information under section 552.002 of the Government Code. Therefore, we conclude the UTEIDs are not subject to the Act and the university is not required to release them to the requestor.²

Next, we note the remaining responsive information is subject to section 552.022 of the Government Code, which provides in pertinent part:

(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 [of the Government Code.]

Gov't Code § 552.022(a)(1). The remaining responsive information consists of completed investigations subject to section 552.022(a)(1). This information must be released unless it is excepted under section 552.108 of the Government Code or is confidential under the Act or other law. *See id.* Although you assert the remaining information is excepted from disclosure under section 552.103 of the Government Code, this section is discretionary 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 section 552.103); Open Records Decision No. 542 at 4 (1990) (statutory predecessor to section 552.103 may be waived); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). Therefore, the university may not withhold the remaining information under section 552.103 of the Government Code. However, you also raise sections 552.101 and 552.108 of the Government Code for some of the information subject to section 552.022(a)(1). As previously noted, section 552.022(a)(1) states information subject to that section may be withheld under section 552.108. Further, section 552.101 protects information made confidential under law. Thus, we will consider your arguments under sections 552.101 and 552.108 for the information subject to section 552.022(a)(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 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:

(a) In this section:

²As we are able to make this determination, we do not address the remaining arguments against disclosure of this information.

(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[.]

...

(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)(1), (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 state the information at issue pertains to a completed investigation that was initiated in response to a complaint made to the university's compliance hotline system. You also state the issues reviewed during the internal investigation pertained to ethical questions and the standards of conduct exhibited by a university employee. You state the purpose of this investigation was to assess and ensure compliance with all applicable laws, policies, ethics, and standards of conduct. Based on your representations and our review, we find the information at issue relates to an investigation conducted under the university's compliance program. *See id.* § 51.971(a)(1).

You seek to withhold the information you have marked in its entirety under section 51.971(c)(1) of the Education Code. You state only a small subset of individuals were involved in the investigation. You further state the requestor has knowledge of the

identities of the involved individuals and the events at issue. You assert release of the information at issue would directly or indirectly identify the individuals who sought guidance from or participated in the compliance program investigations. You inform us none of the relevant individuals at issue have consented to release of their information. Based on your representations and our review, we agree release of the information you have marked would directly or indirectly identify individuals as participants in the compliance program investigation. *See id.* § 51.971(c). Accordingly, this information is confidential under section 51.971 of the Education Code. Therefore, the university must withhold the information you have marked under section 552.101 of the Government Code in conjunction with section 51.971 of the Education Code.³

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that did not result in conviction or deferred adjudication. *See Gov't Code* § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state the information you have marked consists of a closed criminal investigation performed by the university's police department that did not result in a conviction or deferred adjudication. Based on your representation and our review, we agree section 552.108(a)(2) is applicable to the information at issue.

However, as you acknowledge, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). *See also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of the basic information, the university may withhold the information you have marked under section 552.108(a)(2) of the Government Code.⁴

In summary, the UTEIDs are not subject to the Act and the university is not required to release them to the requestor. The university must withhold the information you have marked under section 552.101 of the Government Code in conjunction with section 51.971 of the Education Code. With the exception of the basic information, which must be released, the university may withhold the information you have marked under section 552.108(a)(2) of the Government Code. The remaining information responsive must be released.

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

⁴As our ruling is dispositive, we do not address the remaining argument against disclosure of this information.

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,

A handwritten signature in black ink, appearing to read 'Cole Hutchison', with a long horizontal flourish extending to the right.

Cole Hutchison
Assistant Attorney General
Open Records Division

CH/sb

Ref: ID# 648976

Enc. Submitted documents

c: Requestor
(w/o enclosures)