



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 17, 2017

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

OR2017-05547

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# 648388 (OGC# 173116).

The University of Texas Medical Branch at Galveston (the "university") received a request for information pertaining to the termination of the requestor's client's employment. You state the university will release some of the requested information. You claim some of the submitted information is exempted from disclosure under sections 552.101 and 552.108 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 exempts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 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:

¹We assume 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.

(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 state the information at issue pertains to a completed investigation undertaken by the university police department's internal affairs division and the allegations were found to be substantiated. You state the investigation was conducted in response to allegations against a university employee 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 seek to withhold the information you have marked in its entirety. You inform us only a small subset of individuals were involved in the investigation at issue. You assert release of the information you have marked would directly or indirectly reveal the identities of those individuals who participated in the investigation or provided information because the requestor's client was a party to the incident at issue and has specific knowledge of the incident. You inform us none of these individuals have consented to release of their information. We note that, because the allegations were substantiated, the identifying information of the individual alleged to have committed the activities at issue in the investigation is not confidential under section 51.971(c)(2). Upon review, we agree release of some of the information you have marked would directly or indirectly identify individuals as complainants or as participants in the compliance program investigation. *See id.* § 51.971(c)(1). However, we find the release of the information we have marked would not directly or indirectly identify individuals as complainants or as participants in the investigation. Thus, the university may not withhold this information, which we have marked for release, under section 552.101 in conjunction with section 51.971(c). Accordingly, with the exception of the information we marked for release, 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.

Section 552.108(b)(1) excepts from disclosure the internal records and notations of law enforcement agencies and prosecutors when their release would interfere with law enforcement and crime prevention. Gov't Code § 552.108(b)(1); *see also* Open Records Decision No. 531 at 2 (1989). Section 552.108(b)(1) is intended to protect "information which, if released, would permit private citizens to anticipate weaknesses in a police department, avoid detection, jeopardize officer safety, and generally undermine police efforts to effectuate the laws of this State." *See City of Ft. Worth v. Corryn*, 86 S.W.3d 320 (Tex. App.—Austin 2002, no pet.). To demonstrate the applicability of this exception, a governmental body must meet its burden of explaining how and why release of the requested information would interfere with law enforcement and crime prevention. Open Records Decision No. 562 at 10 (1990). This office has concluded section 552.108(b)(1) excepts from public disclosure information relating to the security or operation of a law enforcement agency. *See, e.g.*, Open Records Decision Nos. 531 (release of detailed use of force guidelines would unduly interfere with law enforcement), 252 (1980) (section 552.108 is designed to protect investigative techniques and procedures used in law enforcement), 143 (1976) (disclosure of specific operations or specialized equipment directly related to investigation or detection of crime may be excepted). Section 552.108(b)(1) is not applicable, however, to generally known policies and procedures. *See, e.g.*, Open Records Decision Nos. 531 at 2-3 (Penal Code provisions, common law rules, and constitutional limitations on use of force not protected), 252 at 3 (governmental body failed to indicate why investigative procedures and techniques requested were any different from those commonly known).

You state the information you marked constitutes a university police department shift roster. You argue release of the submitted shift roster would interfere with law enforcement and compromise the ability of the university's police department to secure the university's

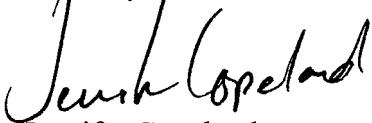
campus and protect the safety and welfare of those on its campus. Based on your representations and our review, we agree release of the information you marked would interfere with law enforcement. Accordingly, the university may withhold the information you have marked under section 552.108(b)(1) of the Government Code.

In summary, with the exception of the information we marked for release, 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 you have marked under section 552.108(b)(1) of the Government Code. The remaining information must be released.

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,



Jennifer Copeland
Assistant Attorney General
Open Records Division

JC/sb

Ref: ID# 649388

Enc. Submitted documents

c: Requestor
(w/o enclosures)