



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 17, 2017

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

OR2017-05582

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# 649392 (OGC# 173059).

The University of Texas Rio Grande Valley (the "university") received a request for specified reports pertaining to specified federal grants and funding. You state you will release some information. You claim portions of the submitted information are excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed 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, 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:

(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). The university states the submitted information relates to a special review conducted by the University of Texas System (the "system") of a specific department at the University of Texas at Brownsville and a subsequent and related system report. We understand the system is an institution of higher education for purposes of section 61.003 of the Education Code. *See id.* § 51.971(a)(2). The university explains the special review was undertaken by the system's Audit Office (the "audit office") at the request of the system's Office of General Counsel. The university states the review pertained to issues of ethical questions, standards of conduct, financial reporting, and internal accounting practices of university employees. The university further states the review was initiated by

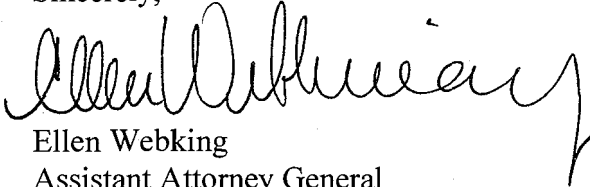
the system to assess and ensure compliance with applicable laws, rules, regulations, and policies. The university states in response to the findings, the system's "Office of General Counsel and Systemwide Compliance Office" engaged in an additional investigation into the allegations raised in the special review. The university states, "[a]s with the initial review, the Joint Office of General Counsel and Systemwide Compliance Office investigation consisted of a process" to ensure compliance with applicable laws, rules, regulations, and policies. Based on these representations, we find the information at issue relates to investigations conducted under the system's compliance program for the purposes of section 51.971. *See id.* § 51.971(a).

The university claims portions of the submitted information are subject to section 51.971(c). Section 51.971(c)(1) makes confidential information that identifies individuals as complainants, as having sought guidance from a compliance program, or as participants in an investigation conducted under a compliance program. *Id.* § 51.971(c)(1). Section 51.971(c)(2) makes confidential information that identifies individuals alleged to have committed the activities that are the subject of a complaint made to a compliance program office if the office determines the report is unsubstantiated or without merit. *Id.* § 51.971(c)(2). However, subsection (c) does not apply to information related to an individual who consents to disclosure of the information. *Id.* § 51.971(d). The university states the investigations at issue concluded in determinations that certain allegations were substantiated and certain allegations were unsubstantiated. Upon review, we agree the information we marked identifies individuals as participants in the compliance program investigations or as individuals alleged to have committed the activities that were the subject of the unsubstantiated allegations. You state these individuals have not consented to release of their information. Accordingly, we find the university must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 51.971(c) of the Education Code. However, the university failed to demonstrate the remaining information at issue would directly or indirectly reveal the identities of the individuals who made the complaints, sought guidance from the audit office, or participated in the investigations at issue, or of individuals who were alleged to have or may have planned, initiated, or participated in activities that are the subject of the investigations at issue involving allegations that were determined to be unsubstantiated. Consequently, the university failed to show the remaining information at issue is confidential under section 51.971 of the Education Code, and the university may not withhold it under section 552.101 of the Government Code on that basis. As the university raises no further exceptions to disclosure, it must release the remaining 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 "Ellen Webking". The signature is fluid and cursive, with a long, sweeping tail that extends downwards and to the right.

Ellen Webking
Assistant Attorney General
Open Records Division

EW/bw

Ref: ID# 649392

Enc. Submitted documents

c: Requestor
(w/o enclosures)