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ATTORNEY GENERAL OF TEXAS

April 28, 2017

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

OR2017-09136

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# 655276 (OGC# 173816).

The University of Texas at Arlington (the "university") received a request for records pertaining to a specified complaint and records pertaining to a specified case of the university's police department. The university claims the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions the university claims 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[.]

...

(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). We understand the university is an institution of higher education for purposes of section 61.003 of the Education Code. *See id.* § 51.971(a)(2). The university states the information at issue pertains to a completed compliance investigation into allegations of employee misconduct undertaken by the university's Office of Equal Opportunity Services. The university states the purpose of the investigation was to assess and ensure compliance with all applicable laws, policies, ethics, and standards of conduct. Based on these 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).

The university seeks to withhold the information it has marked under section 51.971(c)(1) of the Education Code. The university states only a small subset of individuals was involved in the investigation. The university further states the requestor has knowledge of the identities of the involved individuals and the events at issue. The university asserts release of the information at issue would directly or indirectly identify the individuals who sought

guidance from or participated in the compliance program investigations. We note the requestor is the complainant at issue. Thus, pursuant to section 51.971(d), we find the requestor has a right of access to her own information and it may not be withheld from her under section 51.971(c). *Cf.* Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). However, we understand none of the remaining individuals have consented to release of their information. Based on these representations and our review, we agree release of the information the university has marked, with the exception of the requestor's own information, would directly or indirectly identify individuals as participants in the compliance program investigation. *See* Educ. Code § 51.971(c). Accordingly, this information is confidential under section 51.971 of the Education Code. Therefore, with the exception of the requestor's own information, the university must withhold the information it has marked under section 552.101 of the Government Code in conjunction with section 51.971 of the Education Code.

Section 552.108(a)(1) of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). A governmental body claiming section 552.108(a)(1) must explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). The university states the information it has marked relates to an active criminal investigation and release of the information would interfere with that investigation. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Based on these representations and our review, we conclude section 552.108(a)(1) of the Government Code is applicable. Accordingly, the university may withhold the information it has marked under section 552.108(a)(1) of the Government Code.

In summary, with the exception of the requestor's own information, the university must withhold the information it has marked under section 552.101 of the Government Code in conjunction with section 51.971 of the Education Code. The university may withhold the information it has marked under section 552.108(a)(1) of the Government Code. The university 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,



Rahat Huq
Assistant Attorney General
Open Records Division

RSH/som

Ref: ID# 655276

Enc. Submitted documents

c: Requestor
(w/o enclosures)