



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 8, 2017

Ms. Cynthia Tynan
Senior Attorney & Public Information Coordinator
University of Texas System
201 West 7th Street, Suite 600
Austin, Texas 78701-2901

OR2017-09900

Dear Ms. Tynan:

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# 656600 (OGC # 173852 and 173893).

The University of Texas System (the "system") received a request for a specified investigation file and a second request for the personnel files of the complainants in addition to the specified investigation file. You state you have released some information to the second requestor. You state you do not have some information responsive to the second request.¹ 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 information.

Initially, we note some of the submitted information, which we marked, is not responsive to the instant request for information because it was created after the date the system received the instant request for information. This ruling does not address the public availability of any information that is not responsive to the request and the system is not required to release such information in response to this request.

¹The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ *dism'd*); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

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. Section 552.101 of the Government Code encompasses 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.

...

(e) Information is excepted from disclosure under [the Act] if it is collected or produced:

(1) in a compliance program investigation and releasing the information would interfere with an ongoing compliance investigation[.]

Educ. Code § 51.971(a), (e)(1). You state the University of Texas at San Antonio (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 submitted information pertains to an open, ongoing compliance investigation concerning allegations of misconduct against an official of the university. Based on your representations and our review, we agree the information at issue pertains to the university’s compliance program for purposes of section 51.971. *See id.* § 51.971(a). You also represent release of the information at this time would interfere with, and potentially compromise, the ongoing investigation. Accordingly, we conclude the system must withhold the submitted responsive information

in its entirety under section 552.101 of the Government Code in conjunction with section 51.971(e)(1) of the Education Code.²

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,



Jahna Ward
Assistant Attorney General
Open Records Division

JW/eb

Ref: ID# 656600

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)

²As our ruling is dispositive, we need not address the remaining argument against disclosure of this information.