



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 16, 2017

Ms. Jennifer Burnett
Attorney
Office of General Counsel
University of Texas System
201 West 7th Street, Suite 600
Austin, Texas 78701-2901

OR2017-10543

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# 658159 (OGC# 174088).

The University of Texas at San Antonio (the "university") received a request for information pertaining to sexual harassment or misconduct charges levied against university faculty or staff for a specified time period.¹ You state the university will redact information pursuant to the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232g(a).² You

¹We note the university sought and received clarification of the information requested. *See* Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); *see also* *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or over-broad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

²The United States Department of Education Family Policy Compliance Office (the "DOE") has informed this office FERPA does not permit state and local educational authorities to disclose to this office, without parental or an adult student's consent, unredacted, personally identifiable information contained in education records for the purpose of our review in the open records ruling process under the Act. The DOE has determined FERPA determinations must be made by the educational authority in possession of the educational records. We have posted a copy of the letter from the DOE on the Attorney General's website at <https://www.texasattorneygeneral.gov/files/og/20060725usdoe.pdf>.

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.

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

...

(d) Subsection (c) does not apply to information related to an individual who consents to disclosure of the information.

(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), (c)(1), (d)-(e)(1). The university states it 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 some of the submitted information pertains to an open, ongoing compliance investigation concerning allegations of misconduct against a system official investigated by the University of Texas System Office of Systemwide Compliance and the university's Office of Institutional Compliance and Risk Services. The university explains the information at issue was collected or produced during the course of the investigation and disclosure of this information would interfere with the investigation. Upon review, we find release of the information at issue would interfere with the ongoing compliance investigation. Accordingly, we conclude the university must withhold the information it has marked under section 552.101 of the Government Code in conjunction with section 51.971(e)(1) of the Education Code.

The university states the remaining information pertains to closed compliance investigations of allegations of misconduct involving university employees. The university states these investigations were conducted by the university's Office of Equal Opportunity Services. The university states it conducts an internal process of review to assess complaints to ultimately ensure that its employees complied with all applicable law, rules, regulations and policies. Accordingly, we agree the information at issue pertains to the university's compliance program for the purposes of section 51.971. *See id.* § 51.971(a).

The university claims portions of the remaining information are excepted from disclosure under section 51.971(c) of the Education Code. The university asserts release of this information would identify the complainants and individuals who participated in the compliance program investigation. Additionally, the university informs us the individuals at issue have not consented to the disclosure of their identifying information. Upon review, we agree release of the information at issue would identify individuals who made a report to the compliance program office and individuals who participated in the investigation of the complaint. *See id.* § 51.971(c)(1). Accordingly, the university must withhold the information it has marked under section 552.101 of the Government Code in conjunction with section 51.971(c)(1) of the Education Code.³

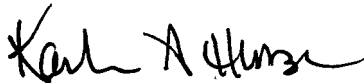
³As our ruling is dispositive, we need not address the university's remaining argument against disclosure of the information at issue.

In summary, the university must withhold the information it has marked under section 552.101 of the Government Code in conjunction with section 51.971(e)(1) of the Education Code. The university must withhold the information it has marked under section 552.101 of the Government Code in conjunction with section 51.971(c)(1) of the Education 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,



Kaelan A. Henze
Assistant Attorney General
Open Records Division

KAH/eb

Ref: ID# 658159

Enc. Submitted documents

c: Requestor
(w/o enclosures)