



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 8, 2017

Ms. Cynthia Tynan
Senior Attorney & Public Information Coordinator
Office of General Counsel
The University of Texas System
210 West 7th Street
Austin, Texas 78701

OR2017-17813

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# 669811 (OGC# 175596).

The University of Texas at Dallas (the "university") received a request for information pertaining to complaints filed against university police officers during a specified time period.¹ You state the university will release some information to the requestor. We understand the university will redact certain dates of birth pursuant to the previous determination issued to the university in Open Records Letter No. 2016-18065 (2016).² You

¹You state 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 overbroad request for information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

²Open Records Letter No. 2016-18065 is a previous determination authorizing the university to withhold the dates of birth of current and former employees of the university when the dates of birth are held in an employment context under section 552.102 of the Government Code without the necessity of requesting an attorney general's decision.

claim some of 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 representative sample of information.³

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 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:

(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

³We 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 those records contain substantially different types of information than that submitted to this office.

(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 also state the submitted information relates to completed compliance investigations of allegations of misconduct regarding ethical questions and standards of conduct of university employees. You inform us the university initiated an internal review process for each complaint at issue to assess and ultimately ensure the university complies with all applicable laws, rules, regulations and policies. Thus, we agree the submitted information pertains to the university's compliance program for the purposes of section 51.971 of the Education Code. *See id.* § 51.971(a).

You claim 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). You state the investigations at issue concluded in determinations that certain allegations were substantiated or partially substantiated and certain allegations were unsubstantiated. Upon review, we find the information you marked, and the additional 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 you marked, and the additional information we marked, under section 552.101 of the Government Code in conjunction with section 51.971(c) of the Education Code.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540

S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. The types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). The court of appeals has concluded public citizens' dates of birth are protected by common-law privacy pursuant to section 552.101. *See Paxton v. City of Dallas*, No. 03-13-00546-CV, 2015 WL 3394061, at *3 (Tex. App.—Austin May 22, 2015, pet. denied) (mem. op.).

Upon review, we conclude the information you marked meets the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the university must withhold the information you marked under section 552.101 of the Government Code in conjunction with common-law privacy. Additionally, you indicate the university will redact public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy pursuant to the previous determination issued to the university in Open Records Letter No. 2016-04401 (2016).⁴ However, we note some of the information at issue pertains to individuals who have been de-identified pursuant to section 51.971(c) of the Education Code, and whose privacy interests are, thus, protected. Accordingly, the university may not withhold the dates of birth of the de-identified individuals, which we marked for release, pursuant to the previous determination issued to the university in Open Records Letter No. 2016-04401.

In summary, the university must withhold the information you marked, and the additional information we marked, under section 552.101 of the Government Code in conjunction with section 51.971(c) of the Education Code. The university must withhold the information you marked under section 552.101 of the Government Code in conjunction with common-law privacy. 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

⁴Open Records Letter No. 2016-04401 is a previous determination issued to the university authorizing it to withhold dates of birth of members of the public under section 552.101 of the Government Code in conjunction with common-law privacy without the necessity of requesting an attorney general's decision.

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 'KH' followed by a stylized flourish.

Kieran Hillis
Assistant Attorney General
Open Records Division

KH/sb

Ref: ID# 669811

Enc. Submitted documents

c: Requestor
(w/o enclosures)