



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 23, 2017

Ms. Jennifer Burnett
Attorney & Public Information Coordinator
The University of Texas
210 West Seventh Street
Austin, Texas 78701

OR2017-19270

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# 672554 (OGC# 175952).

The University of Texas Medial Branch at Galveston (the "university") received a request for seven categories of information pertaining to the requestor and her employment with the university. You state you have no information responsive to a portion of the request.¹ You state you will release some information. We understand you will redact information protected by section 552.117(a)(1) of the Government Code pursuant to section 552.024(c)(2) of the Government Code and a personal e-mail address subject to section 552.137 of the Government Code pursuant to the previous determination in Open Records Decision No. 684 (2009).² You claim some the submitted information is excepted

¹The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990), 452 at 3 (1986), 362 at 2 (1983).

²Section 552.024(c)(2) of the Government Code authorizes a governmental body to redact information protected by section 552.117(a)(1) of the Government Code without the necessity of requesting a decision under the Act if the current or former employee or official to whom the information pertains timely chooses not to allow public access to the information. *See Gov't Code* § 552.024(c)(2). If a governmental body redacts such information, it must notify the requestor in accordance with subsections 552.024(c-1) and (c-2). *See id.* § 552.024(c-1)-(c-2). Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold certain categories of information, including e-mail addresses of members of the public under section 552.137, without the necessity of requesting an attorney general decision.

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. 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

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

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 a completed investigation of allegations of misconduct and retaliation conducted by the university's Correctional Managed Care Department. You inform us the university conducts an internal review process 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 seek to withhold most of the submitted information. You claim only a small subset of individuals were involved in the investigation. You state the requestor was a party to the incidents at issue and has specific knowledge of the incidents. Further, you inform us the completed compliance investigation found the allegations were unsubstantiated or without merit. Accordingly, you assert release of the information at issue would directly or indirectly reveal the identities of individuals who participated in the compliance program investigation, and could subject these individuals to harassment or retaliation by other employees of the university because the requestor has detailed knowledge of the alleged incidents at issue. You inform us none of these individuals have consented to release of their information. Upon review, we agree release of the submitted information would directly or indirectly identify individuals as participants in the compliance program investigation, or as an individual alleged to have planned, initiated, or participated in the activities at issue that are the subject to the unsubstantiated allegations. *See id.* § 51.971(c). However, we note, and you acknowledge, the requestor is one of the individuals whose information is subject to section 51.971(c) of the Education Code. Thus, pursuant to section 51.971(d), we find the requestor has a right of access to information pertaining solely to herself, and such information, which you state you will release, may not be withheld from her under section 552.101 of the Government Code in conjunction with section 51.971(c). *Cf.* Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). Accordingly, with the exception of the information pertaining solely to the requestor, which you state you will release, the university must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 51.971(c) of the Education Code.

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,



Matthew Taylor
Assistant Attorney General
Open Records Division

MHT/bw

Ref: ID# 672554

Enc. Submitted documents

c: Requestor
(w/o enclosures)