



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 13, 2017

Mr. Renaldo Stowers
Senior Associate General Counsel
The University of North Texas System
1155 Union Circle, #310907
Denton, Texas 76203-5017

OR2017-23402

Dear Mr. Stowers:

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# 679658 (ORR# 005172).

The University of North Texas (the "university") received a request for information pertaining to a named individual and information pertaining to two specified programs. You state you have redacted information pursuant to the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232g(a).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 representative sample of information.²

¹The 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 <http://www.texasattorneygeneral.gov/open/20060725usdoe.pdf>.

²We 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.

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. Section 51.971 of the Education Code provides, in pertinent 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 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). 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). You state the submitted information pertains to complaints investigated by the university's Office of Equal Opportunity, which is part of the university's compliance program. Based on these representations, we find the information at issue relates to investigations conducted under the university's compliance program. *See id.* § 51.971(a)(1).

You seek to withhold the submitted information under section 51.971(c) of the Education Code. 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. *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). We understand the information in Exhibit A pertains to a completed compliance investigation that concluded in a determination that the complaint at issue was substantiated, and the information in Exhibits B and C pertain to complaints that were unsubstantiated. In regards to Exhibit A, the university claims only a small subset of individuals were involved in the investigation. Accordingly, the university asserts release of the information at issue would directly or indirectly identify the individuals seeking guidance from or participating in the compliance program investigations. The university states none of these individuals have consented to the disclosure of their identifying information. *See id.* § 51.971(d). Upon review, we agree release of the information in Exhibit A would directly or indirectly identify individuals as participants in the compliance program investigation. *See id.* § 51.971(c). Accordingly, the university must withhold Exhibit A in its entirety under section 552.101 of the Government Code in conjunction with section 51.971(c)(1) of the Education Code. You also argue Exhibits B and C should be withheld in their entireties. However, upon review, we find you have not demonstrated the information at issue is confidential in its entirety pursuant to section 51.971.

You also state releasing the information in Exhibits B and C would directly or indirectly reveal the identity of those individuals participating in a compliance program investigation or the identify of an individual alleged to have committed the activity that is the subject of the unsubstantiated allegation. As noted above, subsection (c) does not apply to information related to an individual who consents to disclosure of the information. *Id.* § 51.971(d). We understand none of the individuals whose information is at issue have consented to release of their information. Accordingly, we agree release of the information we have marked would directly or indirectly identify individuals who participated in the investigation of the complaints and the identity of the individual who was the subject of the unsubstantiated allegation. *See id.* § 51.971(c). Thus, the university must withhold the information we have marked in Exhibits B and C under section 552.101 of the Government Code in conjunction

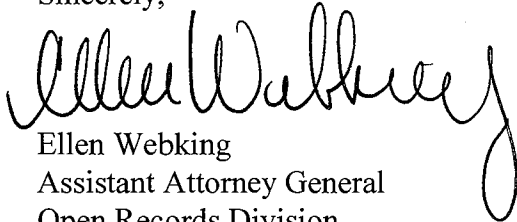
with section 51.971(c) of the Education Code. However, upon review, we find you have failed to demonstrate the remaining information at issue is confidential under section 51.971 of the Education Code, and the university may not withhold it under section 552.101 of the Government Code on that basis.

In summary, the university must withhold Exhibit A in its entirety and the information we have marked in Exhibits B and C under section 552.101 of the Government Code in conjunction with section 51.971(c) of the Education 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,



Ellen Webking
Assistant Attorney General
Open Records Division

EW/tdw

Ref: ID# 679658

Enc. Submitted documents

c: Requestor
(w/o enclosures)