



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 17, 2017

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

OR2017-26355

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# 685906 (OGC# 177185).

The University of Texas of the Permian Basin (the "university") received a request for documents related to a specified investigation and report. You state you will release some information to the requestor. You state you redacted information pursuant to the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code.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.

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

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 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 education records. We have posted a copy of the letter from the DOE to this office on the Attorney General's website: <https://www.texasattorneygeneral.gov/files/og/20060725usdoe.pdf>.

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 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 state 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 relates to a closed compliance investigation of allegations of

misconduct conducted by the university's compliance department. You inform us the university initiated an internal review process to assess and ultimately ensure compliance with all applicable laws, rules, regulations and policies. Based on these representations, we find the submitted information relates to investigations conducted under the university's compliance program. *See id.* § 51.971(a)(1).

With the exception of the information that pertains solely to the requestor, you seek to withhold the submitted information in its entirety. You inform us only a small subset of individuals were involved in the investigation at issue, and release of the information would directly or indirectly reveal the identities of those individuals who participated in the investigation. You further explain the requestor has specific knowledge of the events at issue and the employees involved. Accordingly, you assert release of the information at issue would directly or indirectly identify the individuals seeking guidance from or participating in the compliance program investigation. Subsection (c) does not apply to information related to an individual who consents to disclosure of the information. *Id.* § 51.971(d). You inform us none of the remaining individuals at issue have consented to release of their information. *See id.* Based on your representations and our review, we agree release of the information at issue would directly or indirectly identify individuals as participants in the compliance program investigation. *See id.* § 51.971(c). Accordingly, the university must withhold the information you marked under section 552.101 of the Government Code in conjunction with section 51.971(c)(1) 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,



Kelly McWethy
Assistant Attorney General
Open Records Division

KSM/som

Ref: ID# 685906

Enc. Submitted documents

c: Requestor
(w/o enclosures)