



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 22, 2017

Ms. Claudene Marshall
Assistant General Counsel
Texas A&M University
301 Tarrow Street, 6th Floor
College Station, Texas 77840-7896

OR2017-29150

Dear Ms. Marshall:

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# 689390 (Ref. No. R001842-100317).

Texas A&M University (the "university") received a request for all personnel complaints filed with Human Resources against a named individual during a specified time period. 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 section 51.971 of the Education Code. Section 51.971 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). 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). The submitted information consists of an investigation you state was initiated in response to "an allegation of breach of standards of conduct/ethics." You explain the university conducted the investigation as part of the university's compliance program. Based on your representation and our review, 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).

You seek to withhold the submitted information in its entirety. You state releasing this information would reveal the identities of individuals who participated in a compliance program investigation, or were alleged to have participated in the activities subject to the complaint at issue. You do not inform us any of these individuals have consented to release of their information. We agree release of some of the information would directly or indirectly identify individuals as complainants or as participants in the compliance program investigation. *See id.* § 51.971(c)(1). However, upon review, we are unable to determine whether the complaint at issue was substantiated. Accordingly, we must rule conditionally. To the extent the complaint against the individuals at issue was determined to be unsubstantiated or without merit, the university must withhold the identities of these individuals, which we have marked, under section 552.101 in conjunction with section 51.971(c)(2). To the extent the complaint against an individual was substantiated, the university may not withhold the identifying information of this individual in the investigation at issue under section 552.101 in conjunction with section 51.971(c)(2). In either instance, we find the release of the remaining information we have marked would directly or indirectly identify individuals who reported the conduct at issue or participants in the compliance program investigation. *See id.* Thus, the university must withhold this information under section 552.101 in conjunction with section 51.971(c)(1). However, we find the release of the remaining information would not directly or indirectly identify individuals as complainants or as participants in the investigation. Thus, the university may not withhold the remaining information under section 552.101 in conjunction with section 51.971(c).

In summary, to the extent the complaint against the individuals at issue was determined to be unsubstantiated or without merit, the university must withhold the identities of these individuals, which we have marked, under section 552.101 of the Government Code in conjunction with section 51.971(c)(2) of the Education Code; however, to the extent the complaint against an individual was substantiated, the university may not withhold the identifying information of this individual under section 552.101 in conjunction with section 51.971(c)(2). The university must withhold the remaining information we have marked that identifies individuals who reported the conduct at issue or were participants in the compliance program investigations under section 552.101 of the Government Code in conjunction with section 51.971(c)(1) 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,

A handwritten signature in cursive script that reads "Erin Groff". The signature is written in black ink and is positioned above the typed name and title.

Erin Groff
Assistant Attorney General
Open Records Division

EMG/sb

Ref: ID# 689390

Enc. Submitted documents

c: Requestor
(w/o enclosures)