



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 2, 2018

Ms. Ana Vieira Ayala
Assistant General Counsel & Public Information Coordinator
Office of General Counsel
The University of Texas System
210 West 7th Street
Austin, Texas 78701-2901

OR2018-02414

Dear Ms. Ayala:

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# 694015 (OGC# 178201).

The University of Texas Southwestern Medical Center (the "university") received a request for information pertaining to the requestor. You state the university will release some information. 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.¹

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:

¹We 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.

(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[.]

...

(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)(1), (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 university states the information at issue pertains to completed compliance investigations into allegations of employee misconduct undertaken by the university’s Human Resources Department. The university states the purpose of the investigations was to assess and ensure compliance with all applicable laws, policies, ethics, and standards of conduct. Based on these representations and our review, we find the information at issue relates to investigations conducted under the university’s compliance program. *See id.* § 51.971(a)(1).

The university seeks to withhold the information it has marked under section 51.971(c)(1) of the Education Code. The university states only a small subset of individuals was involved in the investigations. The university further states the requestor has knowledge of the identities of the involved individuals and the events at issue. The university asserts release of the information at issue would directly or indirectly identify the individuals who sought guidance from or participated in the compliance program investigations. 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 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.

Section 552.101 of the Government Code excepts also encompasses information protected by the Medical Practice Act (the “MPA”), subtitle B of title 3 of the Occupations Code, which provides in pertinent part, the following:

- (a) A communication between a physician and a patient, relative to or in connection with any professional services as a physician to the patient, is confidential and privileged and may not be disclosed except as provided by this chapter.
- (b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.
- (c) A person who receives information from a confidential communication or record as described by this chapter, other than a person listed in Section 159.004 who is acting on the patient’s behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

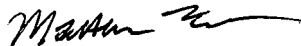
Occ. Code § 159.002(a)-(c). Information that is subject to the MPA includes both medical records and information obtained from those medical records. *See id.* §§ 159.002, .004. Upon review, we find the remaining information constitutes medical records. As such, the university must withhold the remaining information under section 552.101 of the Government Code in conjunction with the MPA.

In summary, 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. The university must withhold the remaining information under section 552.101 of the Government Code in conjunction with the MPA.

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/tdw

Ref: ID# 694015

Enc. Submitted documents

c: Requestor
(w/o enclosures)