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ATTORNEY GENERAL OF TEXAS

January 17, 2019

Ms. Jennifer Burnett
Senior Attorney & Public Information Coordinator
Office of General Counsel
The University of Texas System
210 West 7th Street
Austin, Texas 78701-2901

OR2019-01540

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# 747058 (OGC# 185638).

The University of Texas System (the "system") received a request for the requestor's personnel file and specified emails during a certain time period. The system states it will release some information to the requestor. The system states it will withhold certain information pursuant to Open Records Decision No. 684 (2009).¹ The system claims some of the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception the system claims and reviewed the submitted representative sample of information.²

¹Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold certain categories of information, including L-2 and L-3 declarations under section 552.101 of the Government Code in conjunction with section 1701.306 of the Occupations Code, without the necessity of requesting an attorney general decision. *See* ORD 684.

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 exempts from public disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. This exception 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[.]

(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 system is an institution of higher education for purposes of section 61.003 of the Education Code. *See id.* § 51.971(a)(2). The system states portions of the submitted information relate to internal compliance investigations conducted by the system relating to misconduct of system employees. The system states the investigations were conducted in response to allegations of misconduct and were initiated in order to assess and ensure compliance with all applicable laws, rules,

regulations, and policies. Based on these representations, we find this information relates to investigations conducted under the system's compliance program. *See id.* § 51.971(a)(1).

The system asserts portions of the information at issue are confidential under section 51.971(c)(1). The system states the release of the information it marked would directly or indirectly reveal the identities of individuals making reports to or participating in a 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). We note the requestor was a party to the incidents at issue and has specific knowledge of the incidents. The system claims only a small subset of individuals were involved in the investigations. Accordingly, the system 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 system informs us none of these individuals at issue consented to release of their information. Upon review, we agree release of the information the system marked would directly or indirectly identify individuals who made the complaints or participated in the investigation of the complaints. *See id.* § 51.971(c)(1). Accordingly, the system must withhold the information it marked under section 552.101 of the Government Code in conjunction with section 51.971(c)(1) of the Education Code.³

Section 552.101 of the Government Code also encompasses information made confidential by the Medical Practice Act ("MPA"), subtitle B of title 3 of the Occupations Code, which governs release of medical records. Section 159.002 of the MPA provides, in relevant part:

(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 subject to the MPA includes both medical records and information obtained from those medical records. *See id.* §§ 159.002, .004. This office

³As our ruling is dispositive, we need not consider your remaining arguments against disclosure of this information.

has concluded the protection afforded by section 159.002 extends only to records created by either a physician or someone under the supervision of a physician. *See* Open Records Decision Nos. 487 (1987), 370 (1983), 343 (1982). Upon review, we find the information the system marked constitutes a record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that were created or are maintained by a physician and information obtained from a patient's medical records. Accordingly, the system must withhold the information it marked under section 552.101 of the Government Code in conjunction with the MPA.⁴

Section 552.101 of the Government Code also encompasses information protected by other statutes, such as section 411.083 of the Government Code, which pertains to criminal history record information ("CHRI"). CHRI generated by the National Crime Information Center ("NCIC") or by the Texas Crime Information Center is confidential under federal and state law. CHRI means "information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions." Gov't Code § 411.082(2). Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI obtained from the NCIC network or other states. *See* 28 C.F.R. § 20.21. The federal regulations allow each state to follow its individual law with respect to CHRI it generates. Open Records Decision No. 565 at 7 (1990); *see generally* Gov't Code ch. 411 subch. F. Section 411.083 of the Government Code deems confidential CHRI the Texas Department of Public Safety ("DPS") maintains, except DPS may disseminate this information as provided in chapter 411, subchapter F, or subchapter E-1, of the Government Code. *See* Gov't Code § 411.083. Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Thus, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411. Upon review, we find the information the system marked consists of CHRI the system must withhold under section 552.101 in conjunction with section 411.083 of the Government Code and federal law.

In summary, the system must withhold the information it marked under section 552.101 of the Government Code in conjunction with section 51.971(c)(1) of the Education Code. The system must withhold the information it marked under section 552.101 of the Government Code in conjunction with the MPA. The system must withhold the information it marked

⁴We note this ruling does not affect an individual's right of access to his own medical records from the physician who provided treatment under the MPA, subtitle B of title 3 of the Occupations Code. *See* Occ. Code §§ 159.004, .005, .006; *cf. Abbott v. Tex. State Bd of Pharmacy*, 391 S.W.3d 253 (Tex. App.—Austin 2012, no pet.) (MPA does not provide general right of access to medical records from governmental body responding to a request for information under the Public Information Act).

under section 552.101 in conjunction with section 411.083 of the Government Code and federal law. The system 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,



Kaelan A. Henze
Assistant Attorney General
Open Records Division

KAH/eb

Ref: ID# 747058

Enc. Submitted documents

c: Requestor
(w/o enclosures)