



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 4, 2019

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

OR2019-03182

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# 748573 (OGC# 186015).

The University of Texas at Austin (the "university") received a request for all complaints involving specified employees during a specified time period. You state the university does not have information responsive to a portion of the request.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

¹We note the Act does not require a governmental body to disclose information that did not exist at the time the request was received. *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Attorney General Opinion H-90 (1973); Open Records Decision Nos. 452 at 2-3 (1986), 342 at 3 (1982), 87 (1975); *see also* Open Records Decision Nos. 572 at 1 (1990), 555 at 1-2 (1990), 416 at 5 (1984).

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. This section encompasses 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.

...

(e) Information is excepted from disclosure under [the Act] if it is collected or produced:

(1) in a compliance program investigation and releasing the information would interfere with an ongoing compliance investigation[.]

Educ. Code § 51.971(a), (e)(1). 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 also state the submitted information pertains to an ongoing compliance investigation involving personnel matters conducted by the university. You inform us the investigation is being conducted in response to a complaint regarding university employees and was initiated in order to assess and ensure compliance with all applicable laws, rules, regulations, and policies. Based on your representations and our review, we agree the information at issue pertains to the university's compliance program for purposes of section 51.971. *See id.* § 51.971(a). You also represent the information was collected or produced in the compliance program investigation and release of the information at this time would interfere with the ongoing investigation. Accordingly, we conclude the university must withhold the submitted

information under section 552.101 of the Government Code in conjunction with section 51.971(e)(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,



Tim Neal
Assistant Attorney General
Open Records Division

TN/eb

Ref: ID# 748573

Enc. Submitted documents

c: Requestor
(w/o enclosures)

