



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 28, 2019

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

OR2019-08524

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# 754489 (OGC# 186444).

The University of Texas Southwestern Medical Center (the "university") received a request for reports pertaining to thefts or losses of controlled substances at a specified location which were submitted to two named entities. 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. We have also received and considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit written comments regarding why information should or should not be released).

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. Section 552.101 encompasses information made confidential by other statutes, such as section 1301.91 of title 21 of the Code of Federal Regulations. Section 1301.91 provides, in relevant part:

Reports of drug diversion by fellow employees is not only a necessary part of an overall employee security program but also serves the public interest at large. It is, therefore, the position of the Drug Enforcement Administration [the "DEA"] that an employee who has knowledge of drug diversion from his employer by a fellow employee has an obligation to report such information

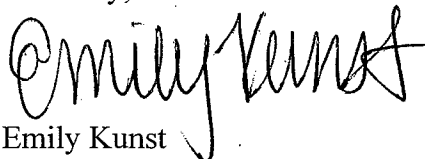
to a responsible security official of the employer. The employer shall treat such information as confidential and shall take all reasonable steps to protect the confidentiality of the information and the identity of the employee furnishing information.

21 C.F.R. § 1301.91. The submitted information consists of completed DEA-106 forms. The university is required under section 1301.76(b) of title 21 of the Code of Federal Regulations to file a DEA-106 form with the Field Division Office of the DEA in the event of the theft or significant loss of any controlled substance. *See id.* § 1301.76(b). Although section 1301.91 requires the university to treat as confidential a report of drug diversion made by an employee to the university's responsible security official and the identity of the employee reporting such information, we find the submitted DEA-106 forms do not reveal reports of drug diversion or the identities of reporting employees as contemplated by section 1301.91. Accordingly, the university may not withhold any of the submitted information under section 552.101 of the Government Code in conjunction with section 1301.91 of title 21 of the Code of Federal Regulations. The submitted information must be released.

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,



Emily Kunst
Assistant Attorney General
Open Records Division

EK/eb

Ref: ID# 745489

Enc. Submitted documents

c: Requestor
(w/o enclosures)