



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 11, 2019

Ms. Ana Vieira Ayala
University of Texas System
Office of General Counsel
210 West Seventh Street
Austin, Texas 78701

OR2019-09753

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# 758907 (ORR# 186788).

The University of Texas at San Antonio (the "university") received a request for all communications from a named individual containing specified terms and invoices related to a specified service during a specified time period. The university indicates it is withholding e-mail addresses of members of the public under section 552.137 of the Government Code pursuant to Open Records Decision No. 684 (2009).¹ The university states it is releasing some of the requested information. The university claims some of the submitted information is excepted from disclosure under sections 552.101 and 552.103 of the Government Code. We have considered the exceptions the university claims 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. Section 552.101 encompasses information protected by other statutes. Section 51.971 of the Education Code provides, in pertinent part, the following:

¹Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold certain information, including an e-mail address of a member of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

(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). The university states it 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 it marked pertains to a completed investigation undertaken by the university. The university states the investigation was conducted in response to allegations

against a university employee and was initiated in order to assess and ensure compliance with all applicable laws, rules, regulations, and policies. Based on these representations, we find the information at issue relates to an investigation conducted under the university's compliance program. *See id.* § 51.971(a)(1).

The university seeks to withhold the information it marked in its entirety. The university informs us only a small subset of individuals were involved in the investigation at issue. The university informs us the requestor knows the identities of participants in the investigation and has knowledge of the events at issue. Thus, the university asserts release of the information at issue would directly or indirectly reveal the identity of an individuals who participated in the investigation or provided information. We understand none of these individuals have consented to release of their information. Upon review, we agree release of the information at issue would directly or indirectly identify individuals as complainants or as participants in the compliance program investigation. *See id.* § 51.971(c)(1). Accordingly, the university 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.²

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. Upon review, we agree the information the university marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Therefore, the university must withhold the information it marked under section 552.101 of the Government Code in conjunction with common-law privacy.

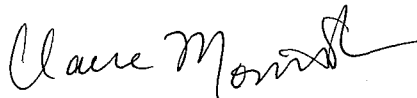
In summary, the university must withhold the information it marked under section 552.101 of the Government Code in conjunction with section 51.971(c)(1) of the Education Code. The university must withhold the information it marked under section 552.101 of the Government Code in conjunction with common-law privacy. 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.

²As our ruling is dispositive for this information, we need not address the remaining argument against its disclosure.

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,



Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/eb

Ref: ID# 758907

Enc. Submitted documents

c: Requestor
(w/o enclosures)