



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 15, 2019

Ms. Cynthia Tynan
Senior Attorney & Public Information Coordinator
The University of Texas System
210 West 7th Street
Austin, Texas 78701-2901

OR2019-10042

Dear Ms. Tynan:

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# 759244 (OGC# 186744).

The University of Texas Health Science Center at Houston (the "university") received a request for the results of a specified investigation concerning the requestor. You state you will release some information to the requestor. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.104 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts 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; 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). 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). You state portions of the submitted information relate to an internal compliance investigation conducted by the university relating to ethical questions and standards of conduct of a university employee. You state the investigation was 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 your representations, we find this information relates to an investigation conducted under the university's compliance program. *See id.* § 51.971(a)(1).

You assert portions of the information at issue are confidential under section 51.971(c)(1). You state the release of the information you 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). You inform us none of these individuals at issue consented to release of their information. Upon review, we agree release of the information you 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 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.

You assert portions of the remaining information are also confidential under section 51.971(c)(2). You state the university completed the investigation at issue and determined the allegations were unsubstantiated. You also state that the information you marked would reveal the identities of individuals who are alleged to have or may have planned, initiated, or participated in activities that are the subject of the unsubstantiated allegations. You also state none of the individuals at issue consented to the release of their identifying information. Upon review, we agree release of the information you marked would reveal the identities of individuals who are alleged to have or may have planned, initiated, or participated in activities that are the subject of the unsubstantiated allegations. Accordingly, the university must withhold the information it marked under section 552.101 of the Government Code in conjunction with section 51.971(c)(2) of the Education Code.

The university seeks to withhold some of the remaining information under section 552.104(a) of the Government Code. Section 552.104(a) excepts from disclosure “information that, if released, would give advantage to a competitor or bidder.” *Id.* § 552.104(a). The “test under section 552.104 is whether knowing another bidder’s [or competitor’s information] would be an advantage, not whether it would be a decisive advantage.” *Boeing Co. v. Paxton*, 466 S.W.3d 831 (Tex. 2015). The university asserts it has specific marketplace interests in the information at issue because the university must recruit and retain faculty. The university represents the information at issue concerns faculty compensation. The university argues, because it must continue to recruit and retain faculty, release of the information at issue would disadvantage the university in the competitive marketplace. However, upon review, we find the university failed to demonstrate the applicability of section 552.104 in this instance and the university may not withhold the information at issue on that basis.

In summary, the university must withhold the information it marked under section 552.101 of the Government Code in conjunction with sections 51.971(c)(1) and 51.971(c)(2) of the Education Code. 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.

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,



Lecelle Clarke
Attorney
Open Records Division

LC/gw

Ref: ID# 759244

Enc. Submitted documents

c: Requestor
(w/o enclosures)