



KEN PAXTON  
ATTORNEY GENERAL OF TEXAS

April 30, 2019

Mr. Nathan Christopher  
Assistant General Counsel  
Texas Tech University System  
3601 4<sup>th</sup> Street, Stop 6246, Suite 2B141  
Lubbock, Texas 79430-6246

OR2019-11480

Dear Mr. Christopher:

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# 762712.

The Texas Tech University Health Science Center (the "university") received two requests from the same requestor for four categories of information pertaining to named current or former university employees, as well as grant and other financial information pertaining to the university.<sup>1</sup> The university states it has no information responsive to a portion of the request.<sup>2</sup> The university claims the submitted information is excepted from disclosure under sections 552.101 and 552.103 of the Government Code. We have considered the claimed exceptions and reviewed the submitted information. We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

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<sup>1</sup>You state the university sought and received clarification of the request for information. *See* Gov't Code § 552.222(b) (stating if information requested is unclear to governmental body or if large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used); *City of Dallas v. Abbott*, 304 S.W.3d 380 (Tex. 2010) (holding when governmental entity, acting in good faith, requests clarification of unclear or overbroad request for public information, ten-business-day period to request attorney general opinion is measured from date request is clarified or narrowed).

<sup>2</sup>The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990), 452 at 3 (1986), 362 at 2 (1983).

Initially, we note the submitted information is subject to section 552.022 of the Government Code, which provides in pertinent part:

(a) [T]he following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108 [of the Government Code];

(2) the name, sex, ethnicity, salary, title, and dates of employment of each employee and officer of a governmental body[.]

(3) information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body[.]

*Id.* § 552.022(a)(1)-(3). Upon review, we find portions of the submitted information consist of completed investigations which are subject to section 552.022(a)(1). Additionally, some of the submitted information consists of the names, salaries, titles, and dates of employment of university employees, which are subject to subsection 552.022(a)(2). Finally, some of the submitted information consists of information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by the university, and, thus, is subject to section 552.022(a)(3). The university must release the information subject to section 552.022(a)(1) unless it is excepted from disclosure under section 552.108 of the Government Code or expressly made confidential under the Act or other law. *See id.* § 552.022(a)(1). The university may withhold information subject to sections 552.022(a)(2) and 552.022(a)(3) only to the extent this information is confidential under the Act or other law. Although the university raises section 552.103 of the Government Code for the information at issue, this exception is a discretionary exception and does not make information confidential under the Act. *See Dallas Area Rapid Transit*, 4 S.W.3d at 475-76 (governmental body may waive section 552.103); Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions). Therefore, the university may not withhold any of the submitted information under section 552.103. However, because section 552.101 of the Government Code can make information confidential for purposes of section 552.022, we will consider the university's arguments under this exception.<sup>3</sup>

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<sup>3</sup>Additionally, although the requestor asserts the university violated section 552.301 of the Government Code when requesting a ruling from this office, the university's claim under section 552.101 of the Government Code can provide a compelling reason to overcome the presumption of openness caused by a failure to comply with section 552.301. *See Gov't Code* §§ 552.007, .301, .302. Accordingly, we will consider the university's argument under section 552.101 despite the alleged violation of section 552.301.

Section 552.101 of the Government Code exempts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. This section encompasses information protected by other statutes, such as section 51.971 of the Education Code, which 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.

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(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 informs us 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 represents the information at issue pertains to investigations conducted by the university's compliance program. Thus, we agree Attachment D pertains to the university's compliance program for the purposes of section 51.971. *See id.* § 51.971(a).

The university asserts Attachment D is confidential pursuant to section 51.971(c) of the Education Code. Section 51.971(c)(1) makes confidential information that identifies individuals as complainants, as having sought guidance from a compliance program, or as participants in an investigation conducted under a compliance program. *Id.* § 51.971(c)(1). Section 51.971(c)(2) makes confidential information that identifies individuals alleged to have committed the activities that are the subject of a complaint made to a compliance program office if the office determines the report is unsubstantiated. *Id.* § 51.971(c)(2). However, subsection (c) does not apply to information related to an individual who consents to disclosure of the information. *Id.* § 51.971(d).

The university informs us the investigations at issue were completed and the university found the allegations were unsubstantiated. The university informs us only a small number of individuals were involved in the investigations at issue and the requestor has specific knowledge of the identities of some of the individuals involved. Accordingly, the university asserts release of the information at issue would directly or indirectly identify the individuals participating in the compliance program investigations at issue. The university states none of the individuals whose information is at issue have consented to the disclosure of their identifying information. *See id.* Based on these representations and our review, we agree release of Attachment D would directly or indirectly identify individuals as participants in the compliance program investigations. *See id.* § 51.971(c)(1). Accordingly, the university must withhold Attachment D under section 552.101 of the Government Code in conjunction with section 51.971(c)(1) of the Education Code.<sup>4</sup> 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](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

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<sup>4</sup>As our ruling is dispositive, we need not address the university's remaining arguments against disclosure of this information.

providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read "Lecelle Clarke". The signature is written in a cursive style with a large initial "L".

Lecelle Clarke  
Attorney  
Open Records Division

LC/gw

Ref: ID# 762712

Enc. Submitted documents

c: Requestor  
(w/o enclosures)