



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

May 6, 2019

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

OR2019-12042

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# 763682 (Ref. Nos. 189214, 189242).

The University of Texas at Austin (the "university") received a request for 1) three categories of information pertaining to prior requests for information made to the university, and 2) five categories of information pertaining to a named employee.<sup>1</sup> Additionally, a second requestor requested information pertaining to complaints made against the named employee during a specified time period. You state you do not have information responsive to portions of the

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<sup>1</sup>You state the university sought and received clarifications of the first 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). We note you sent the first requestor an estimate of charges pursuant to section 552.2615 of the Government Code. *See* Gov't Code § 552.2615. The estimate of charges required the first requestor to provide a deposit for payment of anticipated costs under section 552.263 of the Government Code. *See id.* § 552.263(a). You inform us the university received the required deposit on February 15, 2019. *See id.* § 552.263(e) (if governmental body requires deposit or bond for anticipated costs pursuant to section 552.263, request for information is considered to have been received on date governmental body receives bond or deposit).

first requestor's request.<sup>2</sup> You also state you will release some information to the first requestor. You further state you have redacted information under section 552.117(a)(1) of the Government Code pursuant to section 552.024(c)(2) of the Government Code and pursuant to the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232g(a).<sup>3</sup> You claim the submitted information is excepted from disclosure under sections 552.101 and 552.107 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information, a portion of which constitutes a representative sample.<sup>4</sup>

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 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:

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<sup>2</sup>The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

<sup>3</sup>Section 552.024(c)(2) of the Government Code authorizes a governmental body to redact information protected by section 552.117(a)(1) of the Government Code without the necessity of requesting a decision under the Act if the current or former employee or official to whom the information pertains timely chooses not to allow public access to the information. *See* Gov't Code § 552.024(c)(2). The United States Department of Education Family Policy Compliance Office (the "DOE") has informed this office FERPA does not permit state and local educational authorities to disclose to this office, without parental or an adult student's consent, unredacted, personally identifiable information contained in education records for the purpose of our review in the open records ruling process under the Act. The DOE has determined FERPA determinations must be made by the educational authority in possession of the educational records. We have posted a copy of the letter from the DOE on the Attorney General's website at <https://www.texasattorneygeneral.gov/sites/default/files/files/divisions/open-government/20060725-USDOE-FERPA.pdf>.

<sup>4</sup>We assume that 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 that those records contain substantially different types of information than that submitted to this office.

- (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 inform us 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 the submitted information pertains to an ongoing compliance investigation being conducted by the university's Office of Inclusion and Equity concerning allegations of misconduct against a university employee. Based on your representations and our review, we agree the submitted information pertains to the university's compliance program for purposes of section 51.971. *See id.* § 51.971(a)(1). You also state the information was collected or produced in the ongoing compliance investigation and represent release of the information at this time would interfere with, and potentially compromise, 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.<sup>5</sup>

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.

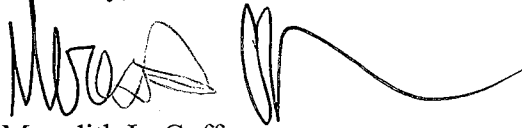
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at <http://www.texasattorneygeneral.gov/open/>

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<sup>5</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

[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,

A handwritten signature in black ink, appearing to read 'Meredith L. Coffman', with a long, sweeping horizontal line extending to the right.

Meredith L. Coffman  
Assistant Attorney General  
Open Records Division

MLC/mo

Ref: ID# 763682

Enc. Submitted documents

c: Requestor  
(w/o enclosures)