



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 21, 2019

Ms. Ana Vieira Ayala
Assistant General Counsel
The University of Texas System
210 West 7th Street
Austin, Texas 78701

OR2019-13495

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# 766615 (Ref. No. 189376).

The University of Texas at Dallas (the "university") received a request for internal audit investigation reports for 2018. You state you will release some information to the requestor. You claim some of the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.116 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.108(a)(1) of the Government Code excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]" Gov't Code § 552.108(a)(1). A governmental body claiming section 552.108(a)(1) must explain how and why this exception is applicable to the information at issue. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). We note section 552.108 is generally not applicable to the records of an internal investigation that is purely administrative in nature and does not involve the investigation or prosecution of crime. *See City of Fort Worth v. Cornyn*, 86 S.W.3d 320 (Tex. App.—Austin 2002, no pet.); *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App. —El Paso 1992, writ denied) (statutory predecessor to section 552.108 not applicable to internal investigation that did not result in criminal investigation or prosecution); *see also* Open Records Decision No. 350 at 3-4 (1982). However, you represent the information you have marked relates to a pending criminal case that is being investigated by the university's police department. Based upon your representation, we conclude release of the information

you have marked will interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Accordingly, we find the university may withhold the information you have marked under section 552.108(a)(1) of the Government Code.

Section 552.116 of the Government Code provides,

(a) An audit working paper of an audit of the state auditor or the auditor of a state agency, an institution of higher education as defined by Section 61.003, Education Code, a county, a municipality, a school district, a hospital district, or a joint board operating under Section 22.074, Transportation Code, including any audit relating to the criminal history background check of a public school employee, is excepted from [required public disclosure]. If information in an audit working paper is also maintained in another record, that other record is not excepted from [public disclosure] by this section.

(b) In this section:

(1) "Audit" means an audit authorized or required by a statute of this state or the United States, the charter or an ordinance of a municipality, an order of the commissioners court of a county, the bylaws adopted by or other action of the governing board of a hospital district, a resolution or other action of a board of trustees of a school district, including an audit by the district relating to the criminal history background check of a public school employee, or a resolution or other action of a joint board described by Subsection (a) and includes an investigation.

(2) "Audit working paper" includes all information, documentary or otherwise, prepared or maintained in conducting an audit or preparing an audit report, including:

(A) intra-agency and interagency communications; and

(B) drafts of the audit report or portions of those drafts.

Gov't Code § 552.116. You inform us the university is an institution of higher education for purposes of section 61.003 of the Education Code. *See* Educ. Code § 61.003. You contend the information you have marked was created and maintained in furtherance of an independent audit conducted by the university's Office of Audit and Consulting Services. You inform us audits such as this are authorized by the Texas Internal Auditing Act, chapter 2102 of the Texas Government Code. *See* Gov't Code §§ 2102.003 (defining types of audits), .005 (requiring state agencies to conduct internal audits), .007 (relating to duties of

internal auditor). Based on your representations and our review, we agree the information at issue consists of audit working papers as defined in section 552.116(b)(2). Therefore, the university may withhold the information you have marked under section 552.116 of the Government Code.¹

Section 552.101 of the Government Code excepts “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” *Id.* § 552.101. Section 552.101 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:

(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

¹As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

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). As noted above, 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 information at issue relates to completed compliance investigations of questions of internal accounting controls, auditing, financial reporting, and ethics and standards of conduct. You inform us the university initiated an internal review process for the complaints at issue to assess and ultimately ensure the university complies with all applicable laws, rules, regulations and policies. Thus, we agree the information at issue pertains to the university's compliance program for the purposes of section 51.971 of the Education Code. *See id.* § 51.971(a).

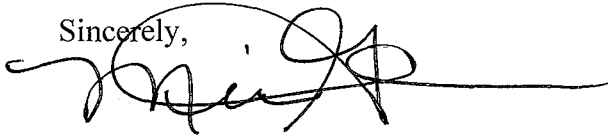
You assert the information at issue pertains to completed investigations, portions of which are subject to section 51.971(c). Section 51.971(c)(1) makes confidential information that identifies individuals as complainants, as having sought guidance from a compliance program, or as participants in an 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). You assert release of the information at issue would directly or indirectly identify the individuals seeking guidance from or participating in the compliance program investigations at issue, as well as the identities of the individuals alleged to have participated in the unsubstantiated alleged activities. You inform us none of the individuals at issue in the investigations have consented to the disclosure of their identifying information. *See id.* § 51.971(d). Upon review, we agree release of the information at issue would directly or indirectly identify individuals as participants in compliance program investigations or the individuals alleged to have participated in the unsubstantiated alleged activities. *See id.* § 51.971(c). Accordingly, we find the university must withhold the information you have marked under section 552.101 of the Government Code in conjunction with section 51.971(c) of the Education Code.

In summary, the university may withhold the information you have marked under section 552.108(a)(1) of the Government Code. The university may withhold the information you have marked under section 552.116 of the Government Code. The university must withhold the information you have marked under section 552.101 of the Government Code in conjunction with section 51.971(c) 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,

A handwritten signature in black ink, appearing to read "Michelle Garza", with a long horizontal line extending to the right.

Michelle Garza
Assistant Attorney General
Open Records Division

MG/eb

Ref: ID# 766615

Enc. Submitted documents

c: Requestor
(w/o enclosures)