



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 18, 2019

Ms. Cynthia Tynan
Senior Attorney & Public Information Coordinator
University of Texas System
210 West Seventh Street
Austin, Texas 78701-2902

OR2019-16437

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# 771238 (ORR# 189829).

The University of Texas at Austin (the "university") received a request for information pertaining to a named individual.¹ The university states it is redacting some information pursuant to the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code.² The university claims the submitted information is excepted

¹After receiving the request, the university sent the 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 requestor to provide a deposit for payment of anticipated costs under section 552.263 of the Government Code. *See id.* § 552.263(a). The university states it received the deposit on March 28, 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 that governmental body receives deposit or bond).

²The 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 consent,, 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 education records. We have posted a copy of the letter from the DOE to this office on the Attorney General's website: <https://www.texasattorneygeneral.gov/sites/default/files/files/divisions/open-government/20060725-USDOE-FERPA.pdf>.

from disclosure under section 552.101 of the Government Code. We have considered the claimed exception 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. 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:

(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[.]

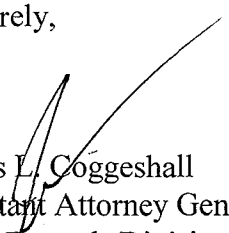
Educ. Code § 51.971(a), (e)(1). The university states it is an institution of higher education for purposes of section 61.003 of the Education Code. *See id.* § 51.971(a)(2). The university also states the submitted information concerns a pending investigation of a complaint made through its compliance program regarding a particular employee. The university informs us the submitted information was collected or produced in the ongoing university compliance program investigation and asserts release of the information would interfere with that investigation. Based on these representations and our review, we agree 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.

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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/mo

Ref: ID# 771238

Enc. Submitted documents

c: Requestor
(w/o enclosures)