



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 21, 2019

Mr. R. Brooks Moore
Ms. Julie Masek
Assistant General Counsel
The Texas A&M System
301 Tarrow Street, 6th Floor
College Station, Texas 77840-7896

OR2019-23223

Dear Ms. Masek and Mr. Moore:

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# 781760 (ORR# C001203-053119).

Prairie View A&M University (the "university") received a request for records relating to sexual harassment complaints involving a named individual. You state the university has redacted information pursuant to the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code.¹ You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.²

¹ The United States Department of Education Family Policy Compliance Office (the "DOE") has informed this office that FERPA does not permit state and local educational authorities to disclose to this office, without parental 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 that 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>

² We assume 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.

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 pertinent 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:

...

(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)(2), (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 the submitted information relates to closed compliance investigations conducted by the university’s Title IX Coordinator, which is part of the university’s compliance program. Based on your representations, we find the submitted information relates to investigations conducted under the university’s compliance program for the purposes of section 51.971 of the Education Code. *See id.* § 51.971(a)(1).

You seek to withhold the submitted information in its entirety and inform us the investigations were completed and the university found the allegations were unsubstantiated. You assert the submitted information should be withheld in its entirety because "all responsive information identifies the person who was the subject of the two reports... because the requestor specifically requests information about complaints against this individual." Additionally, the university does not indicate the individuals at issue have consented to the disclosure of the identifying information. *See id.* § 51.971(d). Upon review, we agree release of the submitted information would directly or indirectly identify an individual who is alleged to have or may have planned, initiated, or participated in activities that are the subject of the unsubstantiated allegations. *See id.* § 51.971(c). Accordingly, the university must withhold the submitted information in its entirety under section 552.101 of the Government Code in conjunction with section 51.971(c) 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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,



D. Michelle Case
Assistant Attorney General
Open Records Division

MC/jxd

Ref: ID# 781760

Enc. Submitted documents

c: Requestor
(w/o enclosures)