



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 5, 2019

Mr. Fernando C. Gomez, JD, PhD
Vice Chancellor and General Counsel
The Texas State University System
601 Colorado Street
Austin, Texas 78701

OR2019-24831

Dear Mr. Gomez:

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# 784549 (File No. 19045.17).

Texas State University (the "university") received a request for the final report and other case files pertaining to a specified investigation of a named university employee. You state you are redacting some 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. Additionally, you have submitted documentation showing you have notified a representative of the named employee of the request for information pursuant to section 552.304 of the Government Code.² *See* Gov't Code § 552.304 (interested party may submit written comments regarding availability of requested information). We have considered the exception you claim and reviewed the submitted information.

¹The 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>.

² As of the date of this letter, we have not received comments from the representative of the named employee.

Section 552.101 of the Government Code exempts from disclosure “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. Section 51.971 of the Education Code provides, in pertinent 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 asserts the submitted information pertains to an investigation into allegations of employee misconduct. The university explains the investigation is being conducted by its Office of Equity and Inclusion. Based on these representations and our review, we agree the information at issue pertains to the university’s compliance program for purposes of section 51.971. *See id.* § 51.971(a). The university informs us the information at issue was collected and is being reviewed in an ongoing compliance investigation. The university also represents release of the information would interfere with, and potentially compromise, the ongoing case. Based on these representations and our review, we find 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.³

³ As our ruling is dispositive, we need not address your remaining argument.

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,



Erin Groff
Assistant Attorney General
Open Records Division

EMG/eb

Ref: ID# 784549.

Enc. Submitted documents

c: Requestor
(w/o enclosures)