



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 27, 2019

Ms. Cynthia Tynan
Senior Attorney & Public Information Coordinator
The University of Texas System
210 West 7th Street
Austin, Texas 78701

OR2019-27090

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# 788399 (OGC# 191727).

The University of Texas at San Antonio (the "university") received a request for certain information pertaining to a specified grievance submitted by the requestor. You state the university is withholding student-identifying information pursuant to the Family Education Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code.¹ You also state the university will release some information to the requestor. You claim the some of 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 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. A copy of this letter may be found on the Office of the Attorney General's website at <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 those records contain substantially different types of information than that submitted to this office.

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 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.

...

(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 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.

(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), (c)-(e)(1). You state the university is an institution of higher education under section 61.003 of the Education Code. *See id.* §§ 51.971 (a)(2), 61.003. You state the submitted information relates to internal compliance investigations conducted by the university involving allegations of ethical misconduct by university personnel. You state the investigations were initiated in response to complaints of misconduct by a university employee and were conducted in order to assess and ensure compliance with all applicable laws, rules, regulations, and policies. Based on your representations and our review, we find this information relates to investigations conducted under the university's compliance program. *See id.* § 51.971(a)(1).

You assert the information you indicated is confidential under section 51.971(c) of the Education Code. 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 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 state the information at issue pertains to a closed compliance investigation that “resulted in findings that the allegations were unsubstantiated.” You also state the release of the information at issue would directly or indirectly reveal the identities of individuals who made reports to the office, sought guidance from the office, or participated in the compliance program investigation and individuals who were alleged to have planned, initiated, or participated in activities that were the subject of the unsubstantiated allegations. Further, you explain the requestor knows the identities of the individuals at issue. You inform us none of the individuals at issue consented to release of their information. Upon review, we agree release of the information at issue would directly or indirectly identify these individuals. *See id.* § 51.971(c). Accordingly, the university must withhold the information you indicated under section 552.101 in conjunction with section 51.971(c). As you raise no exceptions to disclosure for the remaining information, the university must release it.

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

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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,

A handwritten signature in black ink, appearing to read 'Blake Brennan', written over a horizontal line.

Blake Brennan
Assistant Attorney General
Open Records Division

BBX/jxd

Ref: ID# 788399

Enc. Submitted documents

c: Requestor
(w/o enclosures)