



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

OR2019-27172

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# 788401 (OGC# 191728).

The University of Texas at San Antonio (the "university") received a request for information pertaining to complaints filed by the requestor against named individuals. You state the university has redacted student-identifying information from the submitted 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 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. Section 552.101 encompasses information protected by other statutes,

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 student 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 education records. A copy of this letter may be found on the Office of the Attorney General's website: <https://www.texasattorneygeneral.gov/sites/default/files/files/divisions/open-government/20060725-SDOE-FERPA.pdf>

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 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). 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 submitted information relates to completed compliance investigations of allegations of violations of university policies regarding ethical questions and standards of conduct of university personnel. 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 submitted information pertains to completed investigations 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 individuals making a report to, 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 state 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 submitted information 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,



Kimbell Kesling
Attorney
Open Records Division

KK/eb

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Enc. Submitted documents

c: Requestor
(w/o enclosures)