



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 18, 2019

Ms. Cynthia Tynan
Senior Attorney & Public Information Coordinator
University of Texas System
210 West Seventh Street
Austin, Texas 78701-2901

OR2019-29445

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# 793503 (ORR# 192310).

The University of Texas at Austin (the "university") received a request for information related to a specified investigation. The university claims the submitted information is excepted from disclosure under sections 552.101, 552.107, and 552.116 of the Government Code. We have considered the exceptions the university claims and reviewed the submitted representative sample of information.¹

Initially, we must address the university's obligations under section 552.301 of the Government Code, which prescribes the procedures a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. *See* Gov't Code § 552.301. Pursuant to section 552.301(e), a governmental body must submit to this office within fifteen business days of receiving an open records request (1) written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See id.* § 552.301(e). The university received the request for information on August 6, 2019.

¹ 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.

The university does not inform us it was closed for any business days between August 6, 2019, and August 27, 2019. Accordingly, the university was required to provide the information required by section 552.301(e) by August 27, 2019. However, the envelope in which the university provided the written request for information as required by section 552.301(e) was shipped on August 30, 2019. *See id.* § 552.308(a)(1) (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Accordingly, we conclude the university failed to comply with the procedural requirements mandated by section 552.301 of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless there is a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ). The university claims sections 552.101, 552.107, and 552.116 of the Government Code for the submitted information. Because sections 552.101 and 552.107 can provide compelling reasons to overcome the presumption of openness, we will address the university's arguments under these exceptions against release of the submitted information. However, we find the university has failed to establish a compelling reason to address its remaining claimed exception.

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, which 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:

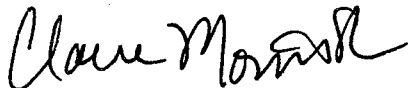
(1) in a compliance program investigation and releasing the information would interfere with an ongoing compliance investigation[.]

Id. § 51.971(a), (e)(1). The university is an institution of higher education for purposes of section 61.003 of the Education Code. See id. § 51.971(a)(2). The university states the submitted information pertains to an ongoing investigation by the university's Office of Internal Audits concerning allegations of misconduct involving a university employee. Further, the university states the matters under investigation pertain to ethical questions, standards of conduct, financial reporting, and the internal accounting practices of university employees. Based on these representations, we find the submitted information relates to an investigation conducted under the university's compliance program for purposes of section 51.971. See id. § 51.971(a)(1). The university also represents the submitted information was collected or produced in the ongoing compliance investigation, and release of the information at this time would interfere with, and potentially compromise, the ongoing investigation. Accordingly, we conclude the university must withhold the submitted information in its entirety under section 552.101 of the Government Code in conjunction with section 51.971(e)(1) of the Education Code.²

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,



Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/gw

²As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

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Enc. Submitted documents

c: Requestor
(w/o enclosures)