



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

December 2, 2019

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

OR2019-33687

Dear 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# 799351 (ORR# C001885-091019).

Texas A&M University (the "university") received a request for all records related to human resources investigations involving four named individuals during a specified time period. You state the university does not have information involving some of the named individuals.<sup>1</sup> You state you have redacted student-identifying information pursuant to the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code.<sup>2</sup> See Gov't Code §§ 552.026 (incorporating FERPA into the Act), .114

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<sup>1</sup> The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. See *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990), 452 at 3 (1986), 362 at 2 (1983).

<sup>2</sup> The United States Department of Education Family 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, 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. 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-SDOE-FERPA.pdf>

(excepting from disclosure “student records”); Open Records Decision No. 539 (1990) (determining the same analysis applies under section 552.114 of the Government Code and FERPA). 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.<sup>3</sup>

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 information protected by other statutes, such as section 51.971 of the Education Code, which 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

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<sup>3</sup> 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.

(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). 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 pertains to a closed compliance investigation conducted by the university's human resources department as part of the university's compliance program. Based on your representation and our review, we agree the information at issue pertains to the university's compliance program for the purposes of section 51.971. *See id.* § 51.971 (a).

You seek to withhold the submitted information in its entirety pursuant to section 51.971(c)(2) of the Education Code. You state the submitted information pertains to a closed investigation in which the allegations were unsubstantiated. You assert the remaining information should be withheld in its entirety because the requestor seeks "any human resources investigation" related to the named individuals. Upon review, we find you have not demonstrated the submitted information is confidential in its entirety pursuant to section 51.971. However, we find release of some of the remaining information you have marked would directly or indirectly reveal the identity of an individual alleged to have planned, initiated, or participated in the events at issue regarding the unsubstantiated allegation. *See id.* § 51.971(c)(2). You state these individuals have not consented to release of the information at issue. Accordingly, with the exception of the information we have marked for release, the university must withhold the remaining information you have marked and the additional information we have marked to withhold under section 552.101 in conjunction with section 51.971(c)(2) of the Education Code. However, we find none of the remaining information at issue is subject to section 51.971(c)(2). Therefore, the university may not withhold any of the remaining information under section 552.101 on that basis and must release the remaining information.

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,

A handwritten signature in black ink, appearing to read "Tim Neal". The signature is stylized with a large initial "T" and a cursive "Neal".

Tim Neal  
Assistant Attorney General  
Open Records Division

TN/mo

Ref: ID# 799351

Enc. Submitted documents

c: Requestor  
(w/o enclosures)