



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 16, 2019

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

OR2019-35379

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# 803795 (OGC# 193203).

The University of Texas at Dallas (the "university") received a request for a list of all complaints and grievances filed throughout the university during a specified time period. You state you will release some information. You state you will redact student-identifying information pursuant to the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code.¹ You claim 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. We have posted a copy of the letter from the DOE on 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

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, including 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

(2) information that directly 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.

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.

(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). 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 states some of the submitted information relates to internal compliance investigations conducted by the university relating to ethical questions and standards of conduct of university employees. The university also states the investigations were conducted in response to allegations of misconduct and were initiated in order to assess and ensure compliance with all applicable laws, rules, regulations, and policies. Based upon these representations and our review, we find this information relates to investigations conducted under the university's compliance program. *See id.* § 51.971(a)(1).

The university asserts release of the information it has marked under section 51.971(c)(1) would directly or indirectly reveal the identities of individuals making reports to or participating in closed compliance program investigations. Further, the university states release of the information it marked under section 51.971(c)(2) would directly or indirectly reveal the identities of individuals who were alleged to have or may have planned, initiated, or participated in activities that are the subject of the investigations, when those allegations were unsubstantiated. Subsection (c) does not apply to information related to an individual who consents to disclosure of the information. *Id.* § 51.971(d). The university informs us the individuals at issue did not consent to release of their information. Upon review, we agree the university must withhold the information it has marked under section 552.101 of the Government Code in conjunction with section 51.971(c) of the Education Code. The university further informs us the information it has marked under section 51.971(e)(1) was collected or produced in ongoing university compliance program investigations and asserts release of the information would interfere with the investigations. Based upon these representations and our review, we agree the university must withhold the information it has marked under section 552.101 of the Government Code in conjunction with section 51.971(e)(1) of the Education Code. The university 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 that reads "Kimbell Kesling". The signature is written in a cursive style with a long, sweeping tail on the final letter.

Kimbell Kesling
Attorney
Open Records Division

KK/mo

Ref: ID# 803795

Enc. Submitted documents

c: Requestor
(w/o enclosures)