



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 20, 2019

Ms. Cynthia Tynan
University of Texas System
Office of General Counsel
210 West Seventh Street
Austin, Texas 78701-2901

OR2019-36290

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# 802825 (OGC #: 193127 and OGC# 193128).

The University of Texas at Austin (the "university") received two requests from the same requestor for all information related to a specified complaint and all communications exchanged between named individuals. The university states it is withholding 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 assert some of the submitted information is not subject to the Act. The university claims the submitted information is excepted from disclosure under sections 552.101 and 552.107 of the Government Code. We have considered your arguments and reviewed the submitted representative sample of information.² We have also received and considered comments

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-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

submitted by the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit written comments regarding why information should or should not be released).

Initially, we address your assertion the information you indicated under section 51.914 of the Education Code is not subject to the Act. Subsection 51.914(a) provides, in relevant part, the information to which it applies is "confidential and is not subject to disclosure under [the Act]." *See* Educ. Code § 51.914(a). Subsection 51.914(b) provides, in relevant part, the information to which it applies "is not subject to [the Act]." *See id.* § 51.914(b). However, subsections 51.914(a) and (b) do not remove the information at issue from the Act's application. We interpret the language of these subsections to mean the types of information protected by section 51.914 are subject to the Act's application. The Act applies to "public information," which is defined in section 552.002(a) of the Government Code as information that is written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

(1) by a governmental body;

(2) for a governmental body and the governmental body:

(A) owns the information;

(B) has a right of access to the information; or

(C) spends or contributes public money for the purpose of writing, producing, collecting, assembling, or maintaining the information;
or

(3) by an individual officer or employee of a governmental body in the officer's or employee's official capacity and the information pertains to official business of the governmental body.

Gov't Code § 552.002(a). Information is "in connection with the transaction of official business" if it is "created by, transmitted to, received by, or maintained by an officer or employee of the governmental body in the officer's or employee's official capacity, or a person or entity performing official business or a government function on behalf of a governmental body, and pertains to official business of the governmental body." *Id.* § 552.002(a-1). Thus, virtually all of the information in a governmental body's physical possession constitutes public information and is subject to the Act. *See* Open Records Decision Nos. 549 at 4 (1990), 514 at 1-2 (1988). Therefore, we find the information at issue is subject to the Act and must be released unless it falls within an exception to disclosure under the Act.

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 public disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. Section 552.101 encompasses 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.

...

(c) The following are confidential:

...

(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)(2), (d). The university informs us 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 the submitted information relates to a completed compliance investigation concerning personnel matters. The university further states the investigation was in response to allegations against university employees and was initiated in order to assess and ensure compliance with all applicable laws, rules, regulations, and policies. Upon review, we agree the information at issue relates to an investigation conducted under the university’s compliance program. *See id.* § 51.971(a).

The university states it completed the investigation and determined the allegations were unsubstantiated. The university asserts the submitted information is confidential in its entirety due to the targeted nature of the request and the requestor's knowledge of the involved individuals. Accordingly, the university asserts release of the information at issue would directly or indirectly identify the individuals participating in the compliance program investigation at issue. The university also informs us the relevant individuals at issue did not consent to release of their information. *See id.* § 51.971(d). Based on these representations and our review, we agree the university must withhold the submitted information under section 552.101 of the Government Code in conjunction with subsection 51.971(c)(2) of the Education Code.³

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,



Sean McCormick
Attorney
Open Records Division

SMC/eb

Ref: ID# 802825

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Party
(w/o enclosures)

³ As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.