



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 27, 2020

Ms. Cynthia Tynan
Assistant General Counsel & Public Information Coordinator
The University of Texas System
210 West 7th Street
Austin, Texas 78701-2901

OR2020-02434

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# 808290 (OGC# 193235).

The University of Texas at Tyler (the "university") received a request for information pertaining to specified types of investigations during a stated period of time.¹ You state the university is withholding student-identifying information pursuant to the Family Education Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code.² You also state the university will redact certain dates of birth pursuant to Open Records

¹ You state, and provide documentation demonstrating, the university sought and received clarifications of the information requested. *See* Gov't Code § 552.222(b) (stating if information requested is unclear to governmental body or if large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used); *City of Dallas v. Abbott*, 304 S.W.3d 380 (Tex. 2010) (holding when governmental entity, acting in good faith, requests clarification of unclear or overbroad request for public information, ten-business-day period to request attorney general opinion is measured from date request is clarified or narrowed).

² 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. A copy of this letter may be found on the Office of the Attorney General's website at <https://www.texasattorneygeneral.gov/sites/default/files/files/divisions/open-government/20060725-USDOE-FERPA.pdf>.

Letter No. 2016-04325 (2016).³ Additionally, you state the university will release some information to the requestor. You claim some of the submitted information is excepted from disclosure under section 552.101 of the Government Code.⁴ We have considered the exception you claim and reviewed the submitted representative sample of information.⁵

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:

(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,

³ Open Records Letter No. 2016-04325 is a previous determination issued to the university authorizing it to withhold certain public citizens’ dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy without requesting a ruling from this office.

⁴ We note the university did not comply with the procedural requirements of section 552.301 of the Government Code in requesting this decision. *See* Gov’t Code § 552.301(e). Nonetheless, because section 552.101 of the Government Code can provide a compelling reason to overcome the presumption of openness, we will consider its applicability to the submitted information. *See id.* §§ 552.007, .302, .352.

⁵ 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.

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 state the university is an institution of higher education under section 61.003 of the Education Code. *See id.* § 51.971(a)(2), 61.003. You state the information at issue relates to closed internal compliance investigations conducted by the university's Title IX Office and the university's Office of Compliance. You state the investigations were initiated in response to complaints alleging misconduct by university employees and were conducted in order to assess and ensure compliance with all applicable laws, rules, regulations, and policies. Based on your representations, we find the information at issue relates to investigations conducted under the university's compliance program. *See id.* § 51.971(a)(1).

You assert the information at issue pertains to completed investigations, portions of 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 one of the reports at issue, which pertains to a completed investigation in which the university found the allegations to be unsubstantiated, is confidential in its entirety due to the nature of the investigation and the size of the department at issue. Upon review, we find you have failed to demonstrate the information at issue is confidential in its entirety pursuant to section 51.971(c). However, you assert release of the information you marked 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 you marked 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, the university must withhold the information you marked under section 552.101 of the Government Code in

conjunction with section 51.971(c) 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,



Blake Brennan
Assistant Attorney General
Open Records Division

BBX/jxd

Ref: ID# 808290

Enc. Submitted documents

c: Requestor
(w/o enclosures)