



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

April 14, 2020

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

OR2020-10916

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# 821866 (OGC No. 194682).

The University of Texas Health Science Center at Houston (the "university") received a request for certain personnel information pertaining to a named university employee. You state the university is withholding certain information pursuant to sections 552.024(c), 552.1175(f), 552.130(c), and 552.136(c) of the Government Code.<sup>1</sup> Additionally, you state

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<sup>1</sup> Section 552.024(c)(2) of the Government Code authorizes a governmental body to redact information protected by section 552.117(a)(1) of the Government Code without the necessity of requesting a decision under the Act if the current or former employee or official to whom the information pertains timely chooses not to allow public access to the information. *See* Gov't Code § 552.024(c)(2). Section 552.1175(f) of the Government Code authorizes a governmental body to redact under section 552.1175(b), without the necessity of requesting a decision from this office, the home addresses and telephone numbers, emergency contact information, social security number, date of birth, and family member information of a peace officer as defined by article 2.12 of the Code of Criminal Procedure who properly elects to keep this information confidential. *See id.* § 552.1175(b), (f). Section 552.130(c) of the Government Code allows a governmental body to redact the information described in section 552.130(a) without the necessity of seeking a decision from the attorney general. *See id.* § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e). Section 552.136 of the Government Code permits a governmental body to withhold the information described in section 552.136(b) without the necessity of seeking a decision from this office. *See id.* § 552.136(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.136(e). *See id.* § 552.136(d), (e).

the university is withholding certain information pursuant to Open Records Decision No. 684 (2009).<sup>2</sup> You also state the university will release some information to the requestor. You claim some of the submitted information is not subject to the Act. You also claim some of the submitted information is excepted from disclosure under sections 552.101 and 552.139 of the Government Code. We have considered your arguments and reviewed the submitted representative sample of information.<sup>3</sup>

You assert some of the submitted information is not subject to the Act. Section 552.002(a) of the Government Code defines “public information” 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). In Open Records Decision No. 581 (1990), this office determined certain computer information, such as source codes, documentation information, and other computer programming, that has no significance other than its use as a tool for the maintenance, manipulation, or protection of public property is not the kind of information made public under section 552.021 of the Government Code. You assert the submitted Texas Commission on Law Enforcement (“TCOLE”) and university employee identification numbers are not subject to the Act. We understand a TCOLE identification

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<sup>2</sup> Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold certain categories of information, including an e-mail address of a member of the public under section 552.137 of the Government Code and L-2 and L-3 declarations under section 552.101 of the Government Code in conjunction with section 1701.306 of the Occupations Code, without the necessity of requesting an attorney general decision. *See* ORD 684.

<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 those records contain substantially different types of information than that submitted to this office.

number is a unique computer-generated number assigned to licensees for identification in TCOLE's electronic database and may be used as an access device number on the TCOLE website. You inform us the employee identification numbers at issue are computer-generated numbers that provide administrative access to the university's computer system, but are not used as computer log-on information. Based on your representations and our review, we agree the submitted TCOLE and university employee identification numbers do not constitute public information under section 552.002 of the Government Code, and the university need not release them to the requestor.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 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, 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 also state the information you indicated relates to closed internal compliance investigations conducted by the university's police department. You further state the investigations were initiated in response to complaints alleging misconduct by a university employee 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 some of the remaining information 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 state the information you marked pertains to completed investigations in which the university found the allegations to be unsubstantiated. You assert this information is confidential in its entirety based on the targeted nature of the present request for information. Upon review, we agree release of the information you marked would directly or indirectly reveal the identity of an individual alleged to have committed the activity that is the subject of the unsubstantiated allegations. You inform us the individual whose information is at issue has not consented to release of their information. *See id.* § 51.971(d). Accordingly, we conclude the university must withhold the information you marked in its entirety under section 552.101 of the Government Code in conjunction with section 51.971(c)(2) of the Education Code.

You state the information you marked pertains to completed compliance investigations that concluded in determinations that the complaints at issue were substantiated. You assert release of the information you marked would directly or indirectly reveal the identity of the individuals who participated in a compliance program investigation. You inform us none of the individuals whose information is at issue have consented to release of their information. Upon review, we agree release of the information you marked would directly or indirectly identify individuals as participants in the compliance program investigation.

*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)(1) of the Education Code.

Section 552.101 of the Government Code also encompasses chapter 411 of the Government Code, which pertains to criminal history record information (“CHRI”). CHRI generated by the National Crime Information Center or by the Texas Crime Information Center is confidential under federal and state law. CHRI means “information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions.” Gov’t Code § 411.082(2). Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI obtained from the federal government or other states. *See* 28 C.F.R. § 20.21; *see also* Open Records Decision No. 565 (1990). However, the federal regulations allow each state to follow its individual law with respect to CHRI it generates. *See* ORD 565. Section 411.083 of the Government Code makes CHRI maintained by the Texas Department of Public Safety (“DPS”) confidential, and only allows for the dissemination of this information as provided in subchapters E-1 and F of chapter 411 of the Government Code. *See* Gov’t Code § 411.083(a). Sections 411.083(b)(1) and 411.089(a) authorize the dissemination of CHRI to a criminal justice agency, but a criminal justice agency may only release CHRI to another criminal justice agency if it is for a criminal justice purpose. *Id.* § 411.089(b)(1). Certain other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency, but may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090-127. Thus, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with chapter 411. However, we note section 411.083 does not apply to active warrant information or other information relating to one’s current involvement with the criminal justice system. *See id.* § 411.081(b) (police department allowed to disclose information pertaining to person’s current involvement in criminal justice system). Upon review, we find some of the information at issue consists of CHRI that is confidential under section 411.083. Accordingly, with the exception of the information we marked for release, the university must withhold the information you marked under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code. However, we find you have failed to demonstrate the remaining information at issue consists of confidential CHRI. Therefore, the university may not withhold any portion of the remaining information at issue under section 552.101 of the Government Code on that basis.

Section 552.102(a) of the Government Code excepts from disclosure “information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.”<sup>4</sup> *Id.* § 552.102(a). The Texas Supreme Court held section 552.102(a)

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<sup>4</sup> The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

excepts from disclosure the dates of birth of state employees in the payroll database of the Texas Comptroller of Public Accounts. *Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex.*, 354 S.W.3d 336 (Tex. 2010). Accordingly, the university must withhold the university employee's date of birth within the remaining information under section 552.102(a) of the Government Code.<sup>5</sup>

After reviewing your remaining arguments, we have determined no novel or complex issue exists within the remaining information. Thus, we address your remaining claims in a summary ruling.

The university must withhold the medical records you marked under section 552.101 of the Government Code in conjunction with section 159.002 of the Occupations Code. The university must withhold the mental health records you marked under section 552.101 of the Government Code in conjunction with section 611.002 of the Health and Safety Code. The university must withhold the polygraph information you marked under section 552.101 of the Government Code in conjunction with section 1703.306 of the Occupations Code. The university must withhold the information pertaining to a license to carry, which you indicated, under section 552.101 of the Government Code in conjunction with section 411.092 of the Government Code. The university must withhold the submitted CR-3 report under section 552.101 of the Government Code in conjunction with section 550.065(b) of the Transportation Code. The university must withhold the information you marked under section 552.101 of the Government Code in conjunction with common-law privacy. The university must withhold the network security information you indicated under section 552.139 of the Government Code. The university must release the remaining information.

Finally, you ask this office to issue a previous determination permitting the university to withhold public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy without the necessity of seeking a ruling from this office. *See* ORD 673. We decline to issue such a previous determination at this time. Accordingly, 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

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<sup>5</sup> As our ruling is dispositive, we need not address your argument against disclosure of this information. In addition, we note, in Open Records Letter No. 2016-18048 (2016), we issued a previous determination to the university authorizing it to withhold current and former university employees' dates of birth under section 552.102 of the Government Code without seeking a ruling from this office. *See* Open Records Decision No. 673 (2001) (listing elements of second type of previous determination under section 552.301(a) of the Government Code).

Ms. Cynthia Tynan - Page 7

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/gw

Ref: ID# 821866

Enc. Submitted documents

c: Requestor  
(w/o enclosures)