



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 4, 2020

Ms. Kristi Godden
Counsel for the university Independent School District
O'Hanlon, Demerath, & Castillo
808 West Avenue
Austin, Texas 78701

OR2020-12553

Dear Ms. Godden:

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# 825684 (ORR# 20-006).

Texas Southern University (the "university"), which you represent, received a request for information pertaining to complaints, grievances, or allegations of misconduct made to the university's Compliance and Ethics Hotline (the "hotline") against any member of the university's board of regents.¹ The university claims the submitted information is excepted from disclosure under sections 552.101 and 552.116 of the Government Code. We have considered the claimed exceptions and reviewed the submitted representative sample of information.²

Initially, we note the submitted information contains a completed report that is subject to section 552.022(a)(1) of the Government Code, which reads as follows:

¹The university sought and received clarification of the information requested. *See* Gov't Code § 552.222 (if request for information is unclear, governmental body may ask requestor to clarify request); *see also* *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (if governmental entity, acting in good faith, requests clarification of unclear or over-broad request, ten-day period to request attorney general ruling is measured from date request is clarified).

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 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.

Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

- (1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

Gov't Code § 552.022(a)(1). Section 552.116 of the Government Code is discretionary in nature and does not make information confidential under the Act. *See* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). Therefore, the university may not withhold the due diligence report under section 552.116. Nevertheless, because section 552.101 of the Government Code makes information confidential under the Act, we will consider its applicability to the due diligence report. However, we will first address the university's arguments to withhold the remaining information.

Section 552.116 of the Government Code provides,

(a) An audit working paper of an audit of the state auditor or the auditor of a state agency, an institution of higher education as defined by Section 61.003, Education Code, a county, a municipality, a school district, a hospital district, or a joint board operating under Section 22.074, Transportation Code, including any audit relating to the criminal history background check of a public school employee, is excepted from [required public disclosure]. If information in an audit working paper is also maintained in another record, that other record is not excepted from [public disclosure] by this section.

(b) In this section:

(1) "Audit" means an audit authorized or required by a statute of this state or the United States, the charter or an ordinance of a municipality, an order of the commissioners court of a county, the bylaws adopted by or other action of the governing board of a hospital district, a resolution or other action of a board of trustees of a school district, including an audit by the district relating to the criminal history background check of a public school employee, or a resolution or other action of a joint board described by Subsection (a) and includes an investigation.

(2) "Audit working paper" includes all information, documentary or otherwise, prepared or maintained in conducting an audit or preparing an audit report, including:

- (A) intra-agency and interagency communications; and
- (B) drafts of the audit report or portions of those drafts.

Gov't Code § 552.116. The university asserts the remaining information consists of audit working papers pertaining to an audit conducted by its Office of Internal Audit and Assurance Services ("OIAA"). The university also informs us the OIAA is authorized to investigate allegations of fraud, waste, or abuse made to the university's hotline. *See id.* § 552.116(b)(1). Based on these representations and our review, we agree the remaining information constitutes audit working papers. Therefore, the university may withhold the remaining information under section 552.116 of the Government Code.³

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 section 51.971 of the Education Code, which provides, in pertinent 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

³ As our ruling is dispositive, we do not address the other argument of the university to withhold this information.

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). The university inform 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 closed compliance investigation conducted by the OIAA, which is part of the university's compliance program. The university explains the compliance investigation resulted in a determination that the allegations were unsubstantiated. The university further represents the investigation was conducted in response to allegations of misconduct by a university employee and initiated in order to assess and ensure compliance with all applicable laws, rules, regulations, and policies. Based on these representations, we find the remaining information relates to an investigation that was conducted under the university's compliance program. *See id.* § 51.971(a)(1).

The university asserts the due diligence report would directly or indirectly reveal the identity of an individual participating in the compliance program investigation at issue, as well as the identity of the individual who was alleged to have or may have planned, initiated, or participated in activities that are the subject of an unsubstantiated report. The university does not inform us the individuals at issue consented to release of their information. *See id.* § 51.971(d). Based on these representations and our review, we find subsections 51.971(c)(1) and (2) of the Education Code are applicable to some of the information at issue, which we have marked. Therefore, the university must withhold the information we have marked under section 552.101 of the Government Code in conjunction with subsections 51.971(c)(1) and (2) of the Education Code. However, we conclude the university has failed to establish subsections 51.971(c)(1) and (2) are applicable to any of the remaining information and may not withhold it on either of those grounds.

In summary, the university must withhold the information we have marked under section 552.101 of the Government Code in conjunction with subsections 51.971(c)(1) and (2) of the Education Code but release the remaining information in the due diligence report. The university may withhold the remaining information under section 552.116 of the Government Code.

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,

James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/eb

Ref: ID# 825684

Enc. Submitted documents

c: Requestor
(w/o enclosures)