



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 11, 2020

Ms. Jennifer Burnett
Senior Attorney & Public Information Coordinator
Office of the General Counsel
University of Texas System
210 West 7th Street
Austin, Texas 78701

OR2020-13218

Dear Ms. Burnett:

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# 827495 (Ref. No. 195633).

The University of Texas at Austin (the "university") received a request for specified investigations involving a named individual. You state you have redacted information pursuant to the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232g(a).¹ You claim the submitted information is excepted from disclosure under sections 552.101 and 552.107 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

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

¹The 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>.

Code § 552.101. This section encompasses section 51.971 of the Education Code. Section 51.971 of the Education Code 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 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.

(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). You inform us the university is an institution of higher education for purposes of section 61.003 of the Education Code. *See id.* § 51.971(a)(2). You state the submitted information relates to a closed compliance investigation and an ongoing compliance investigation conducted by the university's Office of Institutional Equity regarding allegations of misconduct by the university employee named in the request. You state the investigations pertain to standards of conduct and were initiated in order to assess and ensure compliance with all applicable laws, rules, regulations, and policies. Based on these representations, we find the submitted information relates to investigations that were conducted under the university's compliance program. *See id.* § 51.971(a)(1).

You state the allegations in the information you have marked were determined to be unsubstantiated. Additionally, you seek to withhold the information at issue in its entirety due to the targeted nature of the request and the requestor's knowledge of the involved individual. You inform us the individual at issue has not consented to release of his information. *See id.* § 51.971(d). Based on these representations, we agree the university must withhold the information you have marked in its entirety under section 552.101 of the Government Code in conjunction with subsection 51.971(c)(2) of the Education Code.

You inform us the information you have marked was collected and is being reviewed in an ongoing compliance investigation and represent release of the information at this time would interfere with, and potentially compromise, the investigation. Based on these representations and our review, we find the university must withhold the information you have marked under section 552.101 of the Government Code in conjunction with section 51.971(e)(1) of the Education Code.¹

In summary, the university must withhold the information you have marked in its entirety under section 552.101 of the Government Code in conjunction with subsection 51.971(c)(2) of the Education Code. The university must withhold the information you have marked under section 552.101 of the Government Code in conjunction with section 51.971(e)(1) of the Education 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

¹ As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

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,

Meredith L. Coffman
Assistant Attorney General
Open Records Division

MLC/mo

Ref: ID# 827495

Enc. Submitted documents

c: Requestor
(w/o enclosures)