



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 14, 2020

Ms. Angie A. Welborn
General Counsel
State Auditor's Office
P.O. Box 12067
Austin, Texas 78711-2067

OR2020-13714

Dear Ms. Welborn:

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# 828310 [OCG#s 195944, 195945, 195947, and 195948].

The State Auditor's Office (the "SAO") received four requests for complaint and investigation information involving a named individual at the University of Texas at Arlington (the "university"). The SAO states it will withhold audit working papers pursuant to Open Records Letter No. 2004-03648 (2004).¹ The SAO states it does not maintain information responsive to a portion of one of the requests.² Although the SAO takes no position as to whether the submitted information is excepted under the Act, the SAO states release of the submitted information may implicate the interests of the University of Texas System (the "system"). Accordingly, the SAO states, and provides documentation showing, it notified the system of the requests for information and of its right to submit arguments to this office as to why the submitted information should not be

¹ Open Records Letter No. 2004-03648 authorized the SAO to withhold all information, documentary or otherwise, prepared or maintained by the SAO in conducting an audit or preparing an audit report under the authority of chapter 321 of the Government Code, including intra-agency and interagency communications and drafts of the audit report or portions of those drafts under section 552.116 of the Government Code, without requesting a decision from the attorney general.

² The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990), 452 at 3 (1986), 362 at 2 (1983).

released. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). We have received comments from the system. We have considered the submitted arguments and reviewed the submitted information.

Section 552.101 of the Government Code exempts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” *Id.* § 552.101. Section 552.101 encompasses information protected by other statutes, including section 51.971 of the Education Code. Section 51.971 of the Education Code 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[.]

(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)(1), (d). The system informs 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). The system states the information you marked relates to a completed

compliance investigation conducted by the system's Office of Systemwide Compliance or the System Audit Office. The system states the investigation was initiated in response to an allegation of violations of university policies regarding ethical questions and standards of conduct of university personnel. The system informs us the university initiated an internal review process for the complaint at issue to assess and ultimately ensure the university complies with all applicable laws, rules, regulations, and policies. Thus, we agree the information at issue pertains to the university's compliance program for the purposes of section 51.971 of the Education Code. *See id.* § 51.971(a).

The system asserts the information it marked pertains to a completed investigation which is 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). However, subsection (c) does not apply to information related to an individual who consents to disclosure of the information. *Id.* § 51.971(d). The system asserts release of the information at issue would directly identify participants in the compliance program investigation at issue. The system states the individuals at issue have not consented to the disclosure of their identifying information. *See id.* Upon review, we agree release of the information at issue would directly or indirectly identify individuals as a participant in a compliance program investigation. *See id.* § 51.971(c). Accordingly, we find the SAO must withhold the information the system marked under section 552.101 of the Government Code in conjunction with section 51.971(c) of the Education Code. The remaining information must be released.

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,

Paige Lay
Assistant Attorney General
Open Records Division

PL/be

Ref: ID# 828310

Enc. Submitted documents

c: Requestor
(w/o enclosures)

3 Third Parties
(w/o enclosures)