



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

September 3, 2020

Mr. Fernando C. Gomez  
Vice Chancellor and General Counsel  
The Texas State University System  
601 Colorado Street  
Austin, Texas 78701-2904

OR2020-22325

Dear Mr. Gomez:

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# 842016 (TSU File No. 20040.19).

Texas State University (the "university") received a request for information pertaining to a specified case involving the requestor. You state you have redacted student-identifying information from the submitted documents pursuant to the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code.<sup>1</sup> You inform us you will withhold or release some of the requested information pursuant to our ruling in Open Records Letter No. 2019-27421 (2019). *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). You claim some of the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

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<sup>1</sup> 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 student 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 education records. A copy of this letter may be found on the Office of the Attorney General's website: <https://www.texasattorneygeneral.gov/sites/default/files/files/divisions/open-government/20060725-USDOE-FERPA.pdf>.

Section 552.101 of the Government Code exempts 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 51.291 of the Education Code, which provides, in relevant part:

(a) The protections provided by this section apply to:

(1) an alleged victim of an incident of sexual harassment, sexual assault, dating violence, or stalking reported to a postsecondary educational institution; [and]

(2) a person who reports to a postsecondary educational institution an incident of sexual harassment, sexual assault, dating violence, or stalking, who sought guidance from the institution concerning such an incident, or who participated in the institution’s investigation of such an incident[.]

...

(b) Unless waived in writing by the person, the identity of a person described by Subsection (a):

(1) is confidential and not subject to disclosure under [the Act]; and

(2) may be disclosed only to:

(A) the postsecondary educational institution to which the report described by Subsection (a) is made as necessary to conduct an investigation of the report;

(B) a law enforcement officer as necessary to conduct a criminal investigation of the report described by Subsection (a); or

(C) a health care provider in an emergency situation, as determined necessary by the institution.

Educ. Code § 51.291(a)(1)-(2), (b). You state the university is a postsecondary educational institution for purposes of section 51.291. *See id.* § 51.281(3) (defining “postsecondary educational institution” as institution of higher education or private or independent institution of higher education, as those terms are defined by Educ. Code § 61.003). You also state the information at issue relates to a completed investigation conducted by the university’s Office of Equity and Inclusion. You further state the investigation was initiated in response to allegations of stalking under the university’s Sexual Misconduct Policy by a university student. You assert the information you marked identifies an alleged victim and individuals who reported and participated in the investigation. The university states none of these individuals have consented to the disclosure of their identifying information. *See id.* § 51.291(b). Upon review, we find the information you marked identifies an alleged

victim and individuals who reported and participated in the investigation at issue. Accordingly, the university must withhold the information you marked under section 552.101 of the Government Code in conjunction with section 51.291(a) 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,

Nick Ybarra  
Assistant Attorney General  
Open Records Division

NY/rm

Ref: ID# 842016

Enc. Submitted documents

c: Requestor