



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 8, 2022

Ms. Idolina Garcia
Associate General Counsel
The University of North Texas System
1155 Union Circle #310907
Denton, Texas 76203

OR2022-03588

Dear Ms. Garcia:

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# 928898 (PIR No. 3102).

The University of North Texas Health Science Center (the "university") received a request for information pertaining to a specified investigation. 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 representative sample of information.¹

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 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

¹ 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 that those records contain substantially different types of information than that submitted to this office.

Ms. Idolina Garcia

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 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 information you marked relates to a closed compliance investigation by the university that resulted in a determination that the allegations were unsubstantiated. You state the investigation was conducted in response to allegations of misconduct and was initiated in order to assess and ensure compliance with the university's standard of conduct and its sexual harassment policy. Upon review, we agree the information at issue relates to an investigation that was conducted under the university's compliance program. *See id.* § 51.971(a)(1).

You assert the information you have marked is confidential under section 51.971(c). You state release of the information you have marked would directly or indirectly reveal the identities of the student-complainant and other individuals who participated in the

Ms. Idolina Garcia

investigation. Upon review, we find release of the information at issue would directly or indirectly identify individuals as complainants or participants in a compliance program investigation. *See id.* § 51.971(c). Accordingly, we find the university must withhold the information you marked under section 552.101 of the Government Code in conjunction with section 51.971(c) of the Education Code.

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. Section 552.101 encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. The types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). Upon review, we find the remaining information you marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the university must withhold the remaining information you marked under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, the university must withhold the information you marked under section 552.101 of the Government Code in conjunction with section 51.971(c) of the Education Code. The university must withhold the remaining information you marked under section 552.101 of the Government Code in conjunction with common-law privacy. 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,

Britni Ramirez
Assistant Attorney General
Open Records Division

BR/ba

Ms. Idolina Garcia

Ref: ID# 928898

Enc. Submitted documents

c: Requestor
(w/o enclosures)