



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

March 22, 2022

Ms. Jennifer Burnett  
Assistant General Counsel & Public Information Coordinator  
The University of Texas System  
210 West 7th Street  
Austin, Texas 78701-2903

OR2022-08198

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# 937356 (Ref. No. 204053).

The University of Texas Medical Branch at Galveston (the "university") received a request for certain communications and records pertaining to a specified program during a specified time period. You state student-identifying information has been redacted pursuant to the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code.<sup>1</sup> You claim 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.<sup>2</sup>

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 section 161.032 of the Health and Safety Code, which provides, in relevant part:

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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 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-SDOE-FERPA.pdf>.

<sup>2</sup> 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.

(c) Records, information, or reports of a medical committee, medical peer review committee, or compliance officer and records, information, or reports provided by a medical committee, medical peer review committee, or compliance officer to the governing body of a public hospital, hospital district, or hospital authority are not subject to disclosure under [the Act].

...

(e) The records, information, and reports received or maintained by a compliance officer retain the protection provided by this section only if the records, information, or reports are received, created, or maintained in the exercise of a proper function of the compliance officer as provided by the Office of Inspector General of the United States Department of Health and Human Services.

(f) This section and Subchapter A, Chapter 160, Occupations Code, do not apply to records made or maintained in the regular course of business by a hospital, health maintenance organization, medical organization, university medical center or health science center, hospital district, hospital authority, or extended care facility.

Health & Safety Code § 161.032(c), (e), (f). You argue portions of the submitted information consists of records of the university's Office of Institutional Compliance ("OIC"). You state the OIC initiated an investigation of a complaint pursuant to the university's compliance program. We understand the compliance program was developed pursuant to the guidelines issued by the Office of Inspector General of the United States Department of Health and Human Services. You explain the information at issue was created for and is part of the compliance file for the complaint at issue and is not maintained in the regular course of business. *Cf. Texarkana Mem'l Hosp., Inc. v. Jones*, 551 S.W.2d 33, 35 (Tex. 1977) (defining records made or maintained in regular course of business). Based on these representations and our review, we conclude the information the university marked consists of records, information, or reports of a compliance officer acting under subchapter D of chapter 161 of the Health and Safety Code. Therefore, the university must withhold the information you marked under section 552.101 of the Government Code in conjunction with section 161.032 of the Health and Safety Code.<sup>3</sup>

Section 552.101 also encompasses section 51.971 of the Education Code, which provides, in relevant part:

(a) In this section:

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<sup>3</sup> As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

(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.

...

(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 state 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 remaining information relates to a closed compliance investigation and an ongoing compliance investigation conducted by the university’s Office of Legal and Regulatory Affairs regarding allegations of misconduct involving employees. 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 inform us the information you marked was collected or produced in an ongoing compliance program investigation and assert release of the information at issue would interfere with the investigation. Based on your representations and our review, we conclude the university must withhold the information you marked under section 552.101 of the Government Code in conjunction with section 51.971(e)(1) of the Education Code.

You state the allegations in the remaining information you marked were determined to be unsubstantiated. Additionally, you seek to withhold the remaining information at issue in its entirety due to the targeted nature of the request and the requestor's knowledge of the small subset of individuals involved. Further, you state the relevant individuals at issue have not consented to release of their information. *See id.* § 51.971(d). Based upon these representations, and our review, we agree the university must withhold the information you marked under section 552.101 of the Government Code in conjunction with section 51.971(c)(2) of the Education Code.

In summary, the university must withhold the information you marked under section 552.101 of the Government Code in conjunction with section 161.032 of the Health and Safety Code. The university must withhold the information you marked under section 552.101 of the Government Code in conjunction with section 51.971(e)(1) of the Education Code. The university must withhold the information you marked under section 552.101 of the Government Code in conjunction with section 51.971(c)(2) 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 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,

Sarah E. Reese  
Attorney  
Open Records Division

SER/jxd

Ref: ID# 937356

c: Requestor