



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 28, 2022

Mr. R. Brooks Moore
Deputy General Counsel
Texas A&M University System
301 Tarrow Street, 6th Floor
College Station, Texas 77840-7896

OR2022-12161

Dear Mr. Moore:

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# 944470 (Ref. No. G000306-020722).

West Texas A&M University (the "university") received a request for information pertaining to a specified complaint involving the requestor. 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 information.

Initially, we note some of the submitted information, which we have marked, is not responsive because it does not involve the requestor. This ruling does not address the public availability of any information that is not responsive to the request, and the university is not required to release such information in response to this request.¹

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *See* Gov't Code § 552.101. This section encompasses information protected by other statutes. 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

¹ As we are able to make this determination, we need not address your argument against disclosure of this information.

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). We understand 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 pertains to a complaint made to the university’s COVID-19 response team, which is part of the university’s compliance program. Based on this representation, we find this information relates to an investigation conducted under the university’s compliance program for purposes of section 51.971. *See id.* § 51.971(a)(1).

You assert releasing the information you have marked would directly or indirectly reveal the identity of an individual who participated in the compliance program investigation. You state the individual at issue has not consented to release of their information. Upon review, we agree release of the information we have marked would directly or indirectly identify individuals as participants in the compliance program investigation. *See id.* § 51.971(c)(1). Thus, the university must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 51.971(c)(1) of the Education Code. However, none of the remaining information you seek to withhold identifies an individual making a report to, seeking guidance from, or participating in a compliance program

investigation for purposes of section 51.971 of the Education Code. Consequently, you have failed to show how any of the remaining information is confidential under section 51.971 of the Education Code, and it may not be withheld under section 552.101 of the Government Code on that basis.

Section 552.101 of the Government Code also 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. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. This office has also concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). Upon review, we find portions of the remaining information satisfy the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Thus, the university must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find the university has not demonstrated any of the remaining information at issue is highly intimate or embarrassing and not of legitimate public concern. Thus, the university may not withhold any portion of the remaining information under section 552.101 in conjunction with common-law privacy.

In summary, the university must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 51.971(c)(1) of the Education Code. The university must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. The university must release the remaining responsive 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,

Sarah E. Reese
Attorney
Open Records Division

SER/be

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Enc. Submitted documents

c: Requestor
(w/o enclosures)