



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 1, 2022

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

OR2022-33893

Dear Ms. Tynan:

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# 981731 (OGC# 207031).

The University of Texas Medical Branch at Galveston (the "university") received a request for information pertaining to a named individual. You state you will withhold student-identifying information pursuant to the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code.¹ 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.

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 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>.

(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.

Educ. Code § 51.971(a), (c)-(d). The university informs us it is an institution of higher education for purposes of section 61.003 of the Education Code. *See id.* § 51.971(a)(2). The university states the submitted information relates to a compliance investigation conducted by the university’s Office of Systemwide Compliance. The university further states the investigation was in response to allegations against a university employee and was initiated in order to assess and ensure compliance with all applicable laws, rules, regulations, and policies. Upon review, we agree the information at issue relates to an investigation conducted under the university’s compliance program. *See id.* § 51.971(a).

The university asserts the submitted information is confidential in its entirety under section subsection 51.971(c)(2) of the Education Code. However, upon review, we conclude the university failed to demonstrate the applicability of subsection 51.971(c)(2) to the submitted information. Accordingly, the university may not withhold any of the submitted

information under section 552.101 of the Government Code in conjunction with section 51.971(c)(2) of the Education Code. The university also asserts release of a portion of the information at issue would directly or indirectly identify an individual who sought guidance from or participated in the compliance program investigation. Subsection (c) does not apply to information related to an individual who consents to disclosure of the information. *Id.* § 51.971(d). We understand the individual at issue did not consent to release of their information. Upon review, we find the information you marked would directly or indirectly identify an individual who participated in the investigation of the complaint. *See id.* § 51.971(c). Thus, the university must withhold the information you marked under section 552.101 of the Government Code in conjunction with section 51.971(c)(1) 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,

Colin Henry
Attorney
Open Records Division

CEH/pt

Ref: ID# 981731

Enc. Submitted documents

c: Requestor
(w/o enclosures)