



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 7, 2022

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

OR2022-34716

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# 983152 (OGC# 207063).

The University of Texas Southwestern Medical Center (the "university") received a request for six categories of information pertaining to named individuals.¹ You state the university does not have information responsive to four of the requested categories of information.² You further state the university released information responsive to one of the requested categories. 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 disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't

¹ The university sought and received clarification of the information requested. *See* Gov't Code § 552.222 (if request for information is unclear, governmental body may ask requestor to clarify request); *see also* *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (if governmental entity, acting in good faith, requests clarification of unclear or over-broad request, ten-day period to request attorney general ruling is measured from date request is clarified).

² The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

Code § 552.101. This section 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 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 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.

(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). The university states 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 informs us the information at issue relates to a compliance investigation conducted by the university. The university states the investigation was conducted in response to an allegation involving standards of conduct of a university employee and was initiated in order to assess and ensure compliance with all applicable laws, rules, regulations, and policies. Based on your representations, we find the information at issue relates to an investigation conducted under the university's compliance program. *See id.* § 51.971(a).

Section 51.971(c)(1) makes confidential information that identifies individuals as complainants, as having sought guidance from a compliance program, or as participants in an investigation conducted under a compliance program. *Id.* § 51.971(c)(1). Section 51.971(c)(2) makes confidential information that identifies individuals alleged to have committed the activities that are the subject of a complaint made to a compliance program office if the office determines the report is unsubstantiated. *Id.* § 51.971(c)(2). However, subsection (c) does not apply to information related to an individual who consents to disclosure of the information. *Id.* § 51.971(d).

The university informs us the information at issue relates to a completed compliance investigation that concluded in a determination that the allegation was substantiated. You assert release of the information at issue would directly or indirectly reveal the identities of an individual who participated in the investigation or provided information. You inform us none of the individuals whose information is at issue have consented to release of their information. Upon review, we agree release of the information you indicated would directly or indirectly identify individuals as participants in the compliance program investigation. *See id.* § 51.971(c). Accordingly, the university must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 51.971(c)(1) 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,

Justin H. Miller
Attorney
Open Records Division

JHM/eb

Ref: ID# 983152

Enc. Submitted documents

c: Requestor
(w/o enclosures)