



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 5, 2009

Ms. Neera Chatterjee
Office of General Counsel
The University of Texas System
201 West Seventh Street
Austin, Texas 78701-2902

OR2009-13986

Dear Ms. Chatterjee:

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# 355988.

The University of Texas at Dallas (the "university") received a request for copies of all complaints concerning the university's police department or department employees during a specified period. You state the university has redacted student-identifying information pursuant to the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232g(a).¹ You claim the requested complaints, in whole or in part, are excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have

¹The United States Department of Education Family Policy Compliance Office (the "DOE") has informed this office that FERPA does not permit state and local educational authorities to disclose to this office, without parental 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 that FERPA determinations must be made by the educational authority in possession of the education records. We have posted a copy of the letter from the DOE to this office on the Attorney General's website: <http://www.oag.state.tx.us/open/20060725usdoe.pdf>.

considered the exceptions you claim and reviewed the submitted representative sample of information.²

We first turn to your assertion under section 552.108 for the information you marked in Tab 8. Section 552.108(a)(1) excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime ... if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime.” Gov’t Code § 552.108(a)(1). A governmental body claiming section 552.108(a)(1) must reasonably explain how and why release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). We note, however, section 552.108 is generally not applicable to information relating to an internal administrative investigation that did not result in a criminal investigation or prosecution. *See Morales v. Ellen*, 840 S.W.2d 519, 525-26 (Tex. Civ. App.—El Paso 1992, writ denied); *see also* Open Records Decision No. 350 at 3-4 (1982). The submitted complaints pertain to internal investigations of university personnel. You make no representation these complaints pertain to criminal investigations of the university. Instead, you state and provide a letter from the Director of Police for the University of Texas System stating the complaints in Tab 8 were sent to the Collin County District Attorney’s Office (the “district attorney”) for review. Where a governmental body possesses information relating to a pending case of another law enforcement agency, the governmental body may withhold the information under section 552.108 if (1) it demonstrates the information relates to the pending case and (2) this office is provided with a representation from the law enforcement agency that it wishes to withhold the information. However, you do not provide a representation from the district attorney that the information in Tab 8 relates to any pending criminal investigation or prosecution by the district attorney, or that the district attorney wishes to withhold this information. Thus, you failed to show release of the marked information in Tab 8 would interfere with the detection, investigation, or prosecution of crime. Accordingly, the university may not withhold the information you marked from the complaints submitted in Tab 8 under section 552.108(a)(1).

You also raise section 552.101, which excepts from public disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. This exception encompasses information other statutes make confidential. You raise section 552.101 in conjunction with section 51.971 of the Education Code, which provides in part:

²We assume that 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.

(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.

...

(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 produced in a compliance program investigation the release of which would interfere with an ongoing compliance investigation is excepted from disclosure under Chapter 552, Government Code.

Act of June 3, 2009, 81st Leg., R.S., ch. 1015, § 3, 2009 Tex. Sess. Law Serv. 2629, 2629-30 (Vernon) (to be codified at Educ. Code § 51.971). You state that in response to the submitted complaints, the university "initiated its internal process of review to assess and ultimately, ensure that its [police department] employees complied with all applicable laws,

rules, regulations and policies.” Thus, we agree the submitted complaints pertain to the university’s compliance program for purposes of section 51.971. *See* Educ. Code § 51.971(a). We understand the individuals in these complaints who made reports to the compliance program office, participated in investigations conducted under the compliance program, or were alleged to have committed the activities that are the subject of the complaints have not consented to release of their information. *See id.* § 51.971(d).

You seek to withhold Tab 5 in its entirety under section 51.971(e). This section requires (1) there be an ongoing compliance program investigation, and (2) release of the records at issue would interfere with such investigation. *Id.* § 51.971(e). You inform this office the complaints submitted in Tab 5 pertain to unresolved compliance investigations that are ongoing by the university. We understand you to assert release of these complaints at this time will interfere with these investigations. Accordingly, we conclude the university must withhold the complaints in Tab 5 in their entirety under section 552.101 in conjunction with section 51.971(e) of the Education Code.

You next claim the information you marked in Tab 6 is confidential under subsections 51.971(c)(1) and (2). 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). You represent the investigations pertaining to the complaints in Tab 6 concluded in determinations that the complaints were unsubstantiated or without merit. Because they are not responsive to this request, you did not provide this office with the investigative records of the compliance program office or a representation from the compliance program office identifying the parties involved in its investigations of the complaints at issue. Consequently, we must make our determination based on the complaints provided for our review, which do not necessarily reflect the actions or substance of these subsequent investigations. The front pages of the submitted complaints list the names of the complainants, the individuals against whom the complaints are made, and the witnesses. In this instance, we presume the individuals listed as witnesses on the front pages of the complaints actually participated in the compliance program investigations resulting from those complaints. Accordingly, we marked the identifying information of individuals listed as complainants, witnesses, and suspects on the front pages of the complaints in Tab 6, and the university must withhold this information under section 552.101 in conjunction with section 51.971(c). The submitted complaints also contain narratives. Upon review, some of the information you marked in these narratives identifies individuals as complainants, participants in a compliance program investigation, or individuals alleged to have committed an activity that is the subject of a complaint. This information, which we marked, must be withheld under section 552.101 in conjunction with section 51.971(c). However, you do not inform this office, and the submitted narratives do not indicate, whether any of the other

individuals identified in the narratives were actual complainants or participants in the compliance program investigations stemming from these complaints. You also do not explain how the remaining information you marked in Tab 6 is identifying information. Consequently, you failed to show the remaining information is confidential under section 51.971(c), and this information must be released.

You represent the complaints submitted in Tabs 7 and 8 are neither pending nor unsubstantiated. We will again presume the individuals listed as witnesses on the front pages of these complaints actually participated in the resulting compliance program investigations. Accordingly, we marked the identifying information of individuals listed as complainants and witnesses on the front pages of the complaints in Tabs 7 and 8, and the university must withhold this information under section 552.101 in conjunction with section 51.971(c)(1). We also marked some information in the narratives of the complaints in Tabs 7 and 8 that identifies individuals as complainants and participants in compliance program investigations. The university must withhold this marked information under section 552.101 in conjunction with section 51.971(c)(1). However, you do not inform this office, and the narratives do not indicate, whether any other individuals named in these narratives were complainants or participants in the compliance program investigations resulting from these complaints. You also do not explain how the remaining information you marked in Tabs 7 and 8 is identifying information. Because you failed to show this remaining information is confidential under section 51.971(c)(1), it may not be withheld under section 552.101.

Some of the information in Tab 8 is subject to section 552.117(a)(2) of the Government Code. Section 552.117(a)(2) excepts from public disclosure the home address, home telephone numbers, and social security number of a peace officer, as well as information that reveals whether the peace officer has family members, regardless of whether the peace officer complies with sections 552.024 and 552.1175 of the Government Code.³ Gov't Code § 552.117(a)(2). The university must withhold the family member information of peace officers we marked in Tab 8 under section 552.117(a)(2) of the Government Code.

Tab 8 also includes a Texas license plate number that is subject to section 552.130 of the Government Code. Section 552.130 of the Government Code provides that information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by a Texas agency is excepted from public release. Gov't Code § 552.130(a)(1), (2). Accordingly, the university must withhold the Texas license plate number we marked in Tab 8 pursuant to section 552.130 of the Government Code.

In summary, the university must withhold Tab 5 in its entirety, as well as the information we marked in Tabs 6, 7, and 8, under section 552.101 in conjunction with section 51.971 of the Education Code. In Tab 8, the university must withhold the peace officers' family member

³"Peace officer" is defined by Article 2.12 of the Texas Code of Criminal Procedure.

information we marked under section 552.117(a)(2) and the Texas license plate number we marked under section 552.130. The remaining information must be released.

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 http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read 'Bob Davis', with a long horizontal flourish extending to the right.

Bob Davis
Assistant Attorney General
Open Records Division

RSD/cc

Ref: ID# 355988

Enc. Submitted documents

cc: Requestor
(w/o enclosures)