



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 21, 2009

Ms. Neera Chatterjee
The University of Texas System
Office of General Counsel
201 West 7th Street
Austin, Texas 78701-2902

OR2009-14949

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# 358941 (OGC# 120865).

The University of Texas at Arlington (the "university") received a request for information pertaining to two specified complaints. You claim that 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 Code § 552.101. This exception encompasses information other statutes make confidential, such as section 51.971 of the Education Code. Section 51.971 provides in part:

(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;

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). You state the investigation pertaining to the submitted hotline complaints concluded in determinations that the complaints were unsubstantiated or without merit. Upon review, we find portions of the submitted information identify individuals as participants in the compliance program investigations or individuals alleged to have committed the activities that are the subject of the complaints. You state these individuals have not consented to release of their information. We note, however, the requestor is one of the individuals who was alleged to have committed the activities that are the subject of the hotline complaints. Thus, pursuant to section 51.971(d), we find the requestor has a right of access to his information and it may not be withheld under section 51.971(c)(2). *Cf.* Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). Upon review of the remaining information, we find the university must withhold the information we have marked under section 552.101 in conjunction with section 51.971(c).

You do not inform this office, and the submitted information does not indicate, whether any of the other individuals identified in the remaining information were actual complainants or participants in the compliance program investigations at issue. You have also failed to demonstrate how any of the remaining information is identifying information for purposes of section 51.971(c). Consequently, no portion of the remaining information may be withheld under section 552.101 in conjunction with section 51.971.

We note some of the remaining information includes information subject to common-law privacy. Section 552.101 also encompasses information made confidential by the doctrine of common-law privacy, which protects information if it (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The types of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. Portions of the remaining information, which we have marked, are highly intimate and not of legitimate public interest. Thus, the university must withhold this information under section 552.101 on the basis of common-law privacy.

In summary, the university must withhold the identifying information we have marked under section 552.101 in conjunction with section 51.971(c). The university must withhold the information we have marked under section 552.101 on the basis of common-law privacy. 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,



Christina Alvarado
Assistant Attorney General
Open Records Division

CA/rl

Ref: ID# 358941

Enc. Submitted documents

cc: Requestor
(w/o enclosures)