



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 7, 2009

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

OR2009-17264

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# 363458.

The University of Texas System (the "university") received a request for all documents related to personnel investigations at the University of Texas-Pan American's police department in 2008, all documents describing the disciplinary history of a named former police chief since the date of his hire, and all documents specifying reasons for the termination of the named police chief. You state the university has redacted information pursuant to the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232(a).¹ You claim that the remaining requested information is excepted from disclosure

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>.

under sections 552.101 and 552.103 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.²

Initially, we note the submitted information is subject to section 552.022 of the Government Code. Section 552.022 provides in relevant part:

(a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

Gov't Code § 552.022(a)(1). You inform us that the submitted information pertains to completed compliance program investigations. Section 552.022(a)(1) makes this information expressly public unless it is confidential under other law or excepted from disclosure under section 552.108 of the Government Code. Although you seek to withhold the information at issue under section 552.103 of the Government Code, this section is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See id.* § 552.007; *Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision No. 665 at 2 n.5 (discretionary exceptions generally). As such, section 552.103 is not other law that makes information confidential for the purposes of section 552.022. Therefore, the university may not withhold the information at issue under section 552.103. However, you also raise section 552.101 of the Government Code. Because section 552.101 constitutes other law for the purposes of section 552.022, we will address the applicability of this exception to 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. Section 552.101 encompasses section 51.971 of the Education Code, which provides in part:

(a) In this section:

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.

(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[.]

...

(d) Subsection (c) does not apply to information related to an individual who consents to disclosure of the information.

Educ. Code § 51.971. You state that in response to complaints to which the submitted information pertains, the university "initiated its internal process of review to assess and ultimately, ensure that its employees complied with all applicable laws, rules, regulations, and policies." Thus, we agree the submitted information pertains to the university's compliance program for the purposes of section 51.971. *See* Educ. Code § 51.971(a). You state none of the individuals involved in these reports as complainants or participants have consented to release of their information. *See id.* § 51.971(d).

You seek to withhold Tab 5 in its entirety under section 51.971(c)(1). 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). You represent that the complaints are neither unsubstantiated nor without merit. We presume the individuals listed as witnesses actually participated in the resulting compliance program investigations. Accordingly, we marked the identifying information of individuals listed as complainants or witnesses in the complaints and affidavits in Tab 5, 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, affidavits, and case summary in Tab 5 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 51.971(c)(1). However, you do not inform this office, and the information does not indicate, whether any other individuals named were complainants or participants in the compliance program investigations resulting from these complaints. You also do not explain how the remaining information is identifying information. Because you failed to show this remaining information in Tab 5 is confidential under section 51.971(c)(1), it may not be withheld under section 552.101.

Section 552.117(a)(1) of the Government Code excepts from disclosure the home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024 of the Government Code.³ Gov't Code § 552.117(a)(1). Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body's receipt of the request for information. See Open Records Decision No. 530 at 5 (1989). Thus, information may only be withheld under section 552.117(a)(1) on behalf of a current or former employee who made a request for confidentiality under section 552.024 prior to the date of the governmental body's receipt of the request for information. Information may not be withheld under section 552.117(a)(1) on behalf of a current or former official or employee who did not timely request under section 552.024 that the information be kept confidential. We have marked information in Tab 5 that may be subject to section 552.117. Therefore, to the extent the former employee made a timely request for confidentiality under section 552.024, you must withhold the information we have marked in Tab 5 under section 552.117(a)(1) of the Government Code. If the employee did not timely elect confidentiality for the marked information, the university may not withhold the marked information under section 552.117(a)(1) of the Government Code.

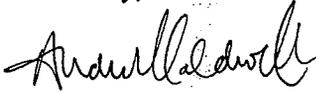
In summary, the university must withhold the information we have marked pursuant to section 552.101 of the Government Code in conjunction with section 51.971(c)(1) of the Education Code. To the extent the former employee made a timely request for confidentiality under section 552.024, the university must withhold the information we have marked under section 552.117(a)(1) of the Government Code. 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.

³The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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,



Andrea L. Caldwell
Assistant Attorney General
Open Records Division

ALC/eeg

Ref: ID# 363458

Enc. Submitted documents

c: Requestor
(w/o enclosures)