



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 24, 2012

Mr. R. Brooks Moore
Managing Counsel - Governance
Office of General Counsel
The Texas A&M University System
301 Tarrow Street, Sixth Floor
College Station, Texas 77840-7896

OR2012-13468

Dear Mr. Moore:

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# 463105 (TAMU 12-273).

Texas A&M University (the "university") received a request for all records of complaints made to the Dean of Faculties regarding all professors from the Computer Science Department, made within a specified period of time.¹ You state the university has redacted information pursuant to the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code.² You claim that the submitted

¹You state the university sought and received clarification of the request for information. *See* Gov't Code § 552.222(b) (stating that if information requested is unclear to governmental body or if a large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used); *City of Dallas v. Abbott*, 304 S.W.3d 380 (Tex. 2010) (holding that when governmental entity, acting in good faith, requests clarification of unclear or overbroad request for public information, ten-business-day period to request attorney general opinion is measured from date the request is clarified or narrowed).

²The United States Department of Education Family Police 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 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>.

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 section 51.971 of the Education Code, which provides:

(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.

Educ. Code § 51.971(a), (c)-(d). You state Exhibit B concerns allegations of civil rights violations reported to and investigated by university administrators who are part of the university's compliance program. You inform us the investigation concluded in a determination the complaint was without merit. Upon review, we agree the submitted information relates to an investigation conducted under the university's compliance program. *See id.* § 51.971(a).

You seek to withhold the information at issue in its entirety and argue that merely withholding the names of the individuals involved is not sufficient to ensure the protections afforded by section 51.971. You state the requestor in this instance was a graduate student in the Computer Science Department during the time period of the events subject of the record at issue. You explain that the student subject of the records at issue and the faculty member will be personally identified by this requestor even if the individuals' names are redacted. You do not state that these individuals have consented to release of their information. Upon review, we agree release of portions of the information at issue, which we have marked, would directly or indirectly reveal the identity of the individuals who made the complaint, participated in the compliance program investigation, or were alleged to have participated in the activities subject to the complaint. *See id.* § 51.971(c)(1)-(2). Accordingly, the university must withhold the information you have highlighted in blue, in addition to the information we have marked under section 552.101 of the Government Code in conjunction with section 51.971(c) of the Government Code. However, none of the remaining information at issue identifies a complainant, participant, or an individual alleged to have committed the activity which is the subject of the complaint for purposes of section 51.971(c). Consequently, you have failed to show how any of the remaining information is confidential under section 51.971 of the Education Code, and it may not be withheld under section 552.101 of the Government Code on that basis.

Section 552.101 of the Government Code also encompasses the common-law right of 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. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be established. *Id.* at 681-82. The type 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. Whether information is subject to a legitimate public interest and therefore not protected by common-law privacy must be determined on a case-by-case basis. *See Open Records Decision No. 373* (1983). In this instance, although you seek to withhold a portion of the remaining information under section 552.101 in conjunction with common-law privacy, you have redacted the identifying information of the subject student pursuant to FERPA and are withholding the identifying information of the faculty member who is the subject of the compliance program investigation pursuant to

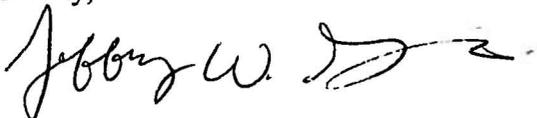
section 51.971(c) of the Texas Education Code. As such, the remaining information does not implicate the privacy interests of any identified individual. Therefore, the university may not withhold any of the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, the university must withhold the information you have highlighted in blue, in addition to the information we have marked under section 552.101 of the Government Code in conjunction with section 51.0791 of the Education 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.

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,



Jeffrey W. Giles
Assistant Attorney General
Open Records Division

JWG/dls

Ref: ID# 463105

Enc. Submitted documents

c: Requestor
(w/o enclosures)