



**ATTORNEY GENERAL OF TEXAS**  
**GREG ABBOTT**

January 31, 2013

Mr. Renaldo Stowers  
Senior Associate General Counsel  
Office of the General Counsel  
University of North Texas System  
1155 Union Circle, #310907  
Denton, Texas 76203-5017

OR2013-01784

Dear Mr. Stowers:

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# 477615 (UNT PIR No. 001618).

The University of North Texas (the "university") received a request for specified information pertaining to four named individuals, a copy of any cellular telephone authorization document for anyone at the police officer level, specified policies, and specified information related to the Sullivant Public Safety Center. You inform us the university will release some of the requested information. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.116 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative samples of information.<sup>1</sup>

Initially, we must address the university's obligations under the Act. Section 552.301 of the Government Code describes the procedural obligations placed on a governmental body that receives a written request for information it wishes to withhold. Pursuant to

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<sup>1</sup>We assume 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 those records contain substantially different types of information than that submitted to this office.

section 552.301(b), the governmental body must request a ruling from this office and state the exceptions to disclosure that apply within ten business days after receiving the request. Gov't Code § 552.301(b). In this instance, you state the university received the request for information on October 31, 2012. Thus, university's ten-business-day deadline was November 14, 2012. We note, however, the university submitted its request for a ruling from this office in an envelope meter-marked November 15, 2012. *See id.* § 552.308(a) (prescribing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Consequently, we find the university failed to comply with the requirements of section 552.301(b) of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the requirements of section 552.301 results in the legal presumption the requested information is public and must be released unless a compelling reason exists to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); *see also* Open Records Decision No. 630 (1994). Generally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third party interests are at stake. Open Records Decision No. 150 at 2 (1977). Although you assert Representative Sample 2 is excepted under section 552.116 of the Government Code, this section is discretionary in nature. It serves only to protect a governmental body's interests and may be waived; as such, it does not constitute a compelling reason to withhold information for purposes of section 552.302. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions in general), 663 at 5 (1999) (waiver of discretionary exceptions). Thus, no portion of Representative Sample 2 may be withheld under section 552.116 of the Government Code. However, because sections 552.101 and 552.117 of the Government Code can provide compelling reasons to withhold information, we will consider the applicability of these exceptions to the submitted information.<sup>2</sup>

You claim Representative Sample 1 is subject to section 552.101 of the Government Code in conjunction with section 51.971 of the Education Code. Section 552.101 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 information other statutes make confidential, such as section 51.971 of the Education Code, which provides, in part:

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<sup>2</sup>The 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).

(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(e)(1). Section 51.971 defines a compliance program as a process to assess and ensure compliance by officers and employees of an institution of higher education with applicable laws, rules, regulations, and policies. *Id.* § 51.971(a)(1). You inform us Representative Sample 1 pertains to an ongoing compliance investigation being conducted by the university's Office of Institutional Compliance (the "OIC") into allegations that "a university official engaged in fraud, waste, and abuse; failed to follow state posting laws; altered public records; failed to follow certain university hiring policies; and failed to follow university standards of conduct related to [the] use of state property." You state these allegations were forwarded to the OIC and the information at issue was collected or created by the OIC as part of the ongoing compliance investigation. Based on your representations and our review, we agree Representative Sample 1 pertains to the university's compliance program for purposes of section 51.971. *See id.* § 51.971(a). You state release of the information at issue would interfere with the ongoing compliance investigation. Accordingly, we conclude the university must withhold Representative Sample 1 under section 552.101 of the Government Code in conjunction with section 51.971(e)(1) of the Education Code.

We note Representative Sample 2 contains information subject to section 552.117(a)(2) of the Government Code. This section excepts from disclosure the home address, home telephone number, emergency contact information, social security number, and family member information of a peace officer, as defined by article 2.12 of the Code of Criminal Procedure, regardless of whether the peace officer made an election under section 552.024 of the Government Code. Gov't Code § 552.117(a)(2). Accordingly, the university must withhold the information we have marked in Representative Sample 2 under section 552.117(a)(2) of the Government Code.

In summary, the university must withhold Representative Sample 1 under section 552.101 of the Government Code in conjunction with section 51.791 of the Education Code. The university must withhold the information we have marked in Representative Sample 2 under section 552.117(a)(2) of the Government Code. As no further exceptions to disclosure are raised for the remaining information in Representative Sample 2, the university must release it.

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](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 'KLC', with a stylized flourish extending to the right.

Kenneth Leland Conyer  
Assistant Attorney General  
Open Records Division

KLC/bhf

Ref: ID# 477615

Enc. Submitted documents

c: Requestor  
(w/o enclosures)