



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 20, 2013

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

OR2013-02810

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# 479245 (University ID# 2012089).

Texas A&M University – Commerce (the "university") received a request for all records relating to faculty trips to Costa Rica and all travel records pertaining to a named individual for a specified period of time.<sup>1</sup> You state you are releasing some of the responsive information to the requestor. 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, a portion of which is a representative sample.<sup>2</sup>

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 relevant part the following:

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<sup>1</sup>You inform us the university sought and received clarification of the information requested. *See* Gov't Code § 552.222(b) (stating if information requested is unclear to governmental body or if 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).

<sup>2</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.

(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.

(2) "Institution of higher education" has the meaning assigned by Section 61.003.

...

(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; or

(2) by a systemwide compliance office for the purpose of reviewing compliance processes at a component institution of higher education of a university system.

Educ. Code § 51.971(a), (e). You inform us Exhibit B-2 is related to an allegation of breach of standards of conduct/ethics at the university. You state the matter was reported to the Texas A&M University System (the "system"), where the System Internal Audit Department (the "SIAD") initiated an internal review to ensure compliance by university employees with applicable laws, rules, regulations, and policies. You assert the submitted records in Exhibit B-2 were collected and produced by the SIAD for the purpose of reviewing compliance processes at a component institution of the system. We understand the SIAD is responsible for, among other things, compliance reviews. Based on your representations, we find Exhibit B-2 was "collected . . . by a systemwide compliance office for the purpose of reviewing compliance processes at a component institution of higher education of a university system." *Id.* § 51.971(e)(2). Therefore, we conclude the university must withhold Exhibit B-2 under section 552.101 of the Government Code in conjunction with section 51.971(e)(2) of the Education Code.

You state Exhibit B-3 pertains to a pending compliance investigation related to a separate allegation of breach of standards of conduct/ethics at the university being conducted by the SIAD. Based on your representations, we find this information relates to an investigation conducted under the university's compliance program. *See id.* § 51.971(a)(1). You assert release of the information pertaining to the ongoing compliance investigation would interfere with the investigation. Accordingly, we conclude the university must withhold the information in Exhibit B-3 under section 552.101 of the Government Code in conjunction with section 51.971(e)(1) of the Education Code.

Section 552.101 of the Government Code also encompasses common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person and (2) 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 demonstrated. *See id.* at 681-82. The type of information considered intimate or 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. This office has found some kinds of medical information or information indicating disabilities or specific illnesses are excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 455 (1987) (information pertaining to prescription drugs, specific illnesses, operations and procedures, and physical disabilities protected from disclosure), 422 (1984), 343 (1982). Upon review, we find portions of Exhibit B-1, which we have marked, are highly intimate or embarrassing and not of legitimate public interest. Therefore, the university must withhold the information we have marked in Exhibit B-1 under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find none of the remaining information you have marked in Exhibit B-1 is highly intimate or embarrassing and not of legitimate public concern. Thus, none of the remaining information at issue may be withheld under section 552.101 in conjunction with common-law privacy.

Section 552.117(a)(1) of the Government Code excepts from disclosure the home address and telephone number, emergency contact information, social security number, and family member information of current or former officials or employees of a governmental body who request this information be kept confidential under section 552.024 of the Government Code.<sup>3</sup> Gov't Code §§ 552.117(a), .024. Whether a particular piece of information is protected by section 552.117(a)(1) must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Thus, information may be withheld under section 552.117(a)(1) only on behalf of a current or former official or employee who made a request for confidentiality under section 552.024 prior to the date of the governmental

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

body's receipt of the request for the 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 the information be kept confidential. We have marked information that is subject to section 552.117 of the Government Code. To the extent the employees whose information we have marked timely requested confidentiality under section 552.024, the university must withhold the information we have marked in Exhibit B-1 under section 552.117(a)(1) of the Government Code. To the extent the employees did not make a timely election under section 552.024, the university may not withhold the information we have marked in Exhibit B-1 under section 552.117(a)(1) of the Government Code.

In summary, the university must withhold Exhibit B-2 under section 552.101 of the Government Code in conjunction with section 51.971(e)(2) of the Education Code and Exhibit B-3 under section 552.101 of the Government Code in conjunction with section 51.971(e)(1) of the Education Code. The university must withhold the information we marked in Exhibit B-1 under section 552.101 of the Government Code in conjunction with common-law privacy. To the extent the employees whose information we have marked timely requested confidentiality under section 552.024 of the Government Code, the university must withhold the information we have marked in Exhibit B-1 under section 552.117(a)(1) of the Government Code. The remaining information in Exhibit B-1 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](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,



Sarah Casterline  
Assistant Attorney General  
Open Records Division

SEC/tch

Ref: ID# 479245

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

