



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 24, 2013

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

OR2013-10642

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# 491091 (University ORR 13-45).

Prairie View A&M University (the "university") received a request for information pertaining to two specified complaints.¹ You claim portions of the submitted information are excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Next, you acknowledge and we agree the university did not comply with its ten- or fifteen-business-day deadlines under section 552.301 of the Government Code in requesting this decision. Gov't Code § 552.301(b), (e). Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the information is public and must be

¹You state the university 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 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 request is clarified or narrowed).

released unless the governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *Id.* § 552.302; *see also 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 (Tex. App.—Austin 1990, no writ). This statutory presumption can generally be overcome when information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). Because the university's claim under section 552.101 of the Government Code can provide a compelling reason for non-disclosure under section 552.302, we will address your argument under that exception.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *See* Gov't Code § 552.101. This section encompasses information protected by other statutes. Section 51.971 of the Education Code provides in relevant part the following:

(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.

...

(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). We understand the university is an institution of higher education for purposes of section 61.003 of the Education Code. *See id.* § 51.971(a)(2). You inform us the submitted information consists of a completed compliance investigation that concluded in a determination the complaints were without merit. You state the investigation was conducted by university administrators who are part of the university's compliance program. 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).

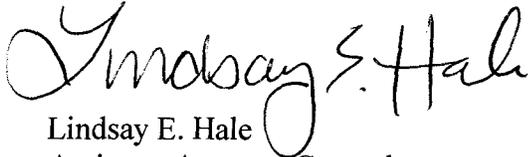
You state releasing the information you have marked would directly or indirectly reveal the identity of those individuals participating in a compliance program investigation or alleged to have participated in the activities subject to the complaint. Subsection (c) does not apply to information related to an individual who consents to disclosure of the information. *Id.* § 51.971(d). We note the requestor is the complainant at issue. 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 from him under section 51.971(c). *Cf.* Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). We understand none of the remaining individuals have consented to release of their information. Upon review, we agree release of most of the remaining information you have marked, and additional information we have marked for withholding, would directly or indirectly identify individuals as participants in the compliance program investigation, or as alleged participants in the activities subject to the complaint. *See id.* § 51.971(c). Thus, with the exception of the information we have marked for release, including the requestor's information, the university must withhold the information you have marked and the additional information we have marked for withholding under section 552.101 in conjunction with section 51.971(c). However, none of the remaining information you seek to withhold, which we have marked for release, identifies an individual who made a report, sought guidance from, or participated in a compliance program investigation, or was alleged to have or may have planned, initiated, or participated in the activities subject to the complaint for purposes of section 51.971 of the Education Code. Consequently, you have failed to show how any of the remaining information is confidential under section 51.971, and it may not

be withheld under section 552.101 on that basis. As you raise no further exceptions to disclosure, the university must release the remaining information.²

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Lindsay E. Hale
Assistant Attorney General
Open Records Division

LEH/tch

Ref: ID# 491091

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²We note the information being released in this instance includes information that may be confidential with respect to the general public. Therefore, if the university receives another request for this information from a different requestor, the university must again seek a ruling from this office.