



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 5, 2014

Ms. Cynthia Tynan
Attorney and Public Information Coordinator
The University of Texas System
201 West Seventh Street
Austin, Texas 78701-2902

OR2014-20116

Dear Ms. Tynan:

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# 542184 (OGC No. 157835).

The University of Texas at Dallas (the "university") received a request for (1) information pertaining to two specified investigations, (2) the complete personnel file of a named individual, and (3) documentation on the level of discipline received by officers of the university police department for specified violations for the past ten years.¹ You state you have released some information to the requestor. We understand the university will redact information pursuant to section 552.130(c) of the Government Code.² You claim portions

¹You note the university sought and received clarification of the request. *See* Gov't Code § 552.222(b) (providing that if request for information is unclear, governmental body may ask requestor to clarify the request); *see also* *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

²Section 552.130(c) of the Government Code allows a governmental body to redact the information described in section 552.130(a) without the necessity of seeking a decision from the attorney general. Gov't Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d),(e).

of the submitted information are excepted from disclosure under sections 552.101 and 552.117 of the Government Code.³ We have considered the exceptions you claim and reviewed the submitted information. We have received and considered comments from the requestor. *See* Gov't Code § 552.304 (permitting interested third party to submit to attorney general reasons why requested information should or should not be released).

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” *Id.* § 552.101. Section 552.101 encompasses information protected by other statutes. Section 51.971 of the Education Code provides, in pertinent 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

³Although the university raises section 552.1175, we note section 552.117 is the correct exception to raise for information the university holds in its capacity as employer. Although the university failed to submit a portion of the specific information requested within the fifteen-business-day time period prescribed by section 552.301(e), sections 552.101 and 552.117 of the Government Code can provide compelling reasons against disclosure. *See* Gov't Code §§ 552.301, .302. Therefore, we will consider the applicability of these exceptions.

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(a), (c)(1), (d). You state 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 assert the submitted information pertains to investigations into allegations of employee misconduct that are closed. You state the compliance investigations were undertaken by individuals within the University of Texas System's Office of the Director of Police to assess and ultimately ensure that the university has complied with all applicable law, rules, regulations, and policies. However, the requestor asserts the investigations at issue are not investigations conducted under the university's compliance program. Whether the investigations at issue were conducted under the university's compliance program is a question of fact. *See* Open Records Decision Nos. 592 at 2 (1991), 552 at 4 (1990), 435 at 4 (1986). This office is unable to resolve disputes of fact in the open records ruling process. Accordingly, we must rely upon the facts alleged to us by the governmental body requesting our opinion, or upon those facts that are discernable from the documents submitted for our inspection. *See* Open Records Decision No. 522 at 4 (1989). Accordingly, based on the representations of the university and our review of the information at issue, we find the information at issue relates to investigations conducted under the university's compliance program. *See id.* § 51.971(a)(1).

You seek to withhold portions of the submitted information under section 51.971(c) of the Education Code. You inform us some of the relevant individuals have consented to the disclosure of their identifying information. You seek to withhold the identifying information of the remaining relevant individuals who have not consented to the disclosure of their information in the investigations at issue. You assert release of this information would identify individuals making a report to, seeking guidance from, or participating in the compliance investigations. Upon review, we agree release of the information at issue would identify individuals who made a report to the compliance program office and individuals who participated in the investigation of the complaint. *See id.* § 51.971(c)(1). Accordingly, the university must withhold the information you have marked under section 552.101 of the Government Code in conjunction with section 51.971 of the Education Code.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which protects information that: (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. *See 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. *See id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation. Id.* at 683. Upon review, we find the information you have marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the university must withhold the information you have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.117(a)(2) of the Government Code excepts from public disclosure the home address, home telephone number, emergency contact information, and social security number of a peace officer, as well as information that reveals whether the peace officer has family members, regardless of whether the peace officer complies with sections 552.024 and 552.1175 of the Government Code. *See Gov't Code* § 552.117(a)(2). Section 552.117(a)(2) applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure. We note section 552.117 is also applicable to personal cellular telephone numbers, provided the cellular telephone service is not paid for by a governmental body. *See Open Records Decision No. 506 at 5-6 (1988)* (section 552.117 not applicable to cellular telephone numbers paid for by governmental body and intended for official use). Accordingly, the university must withhold the information you have marked under section 552.117(a)(2) of the Government Code; however, the university may only withhold the marked cellular telephone number if a governmental body does not pay for the cellular telephone service.

In summary, the university must withhold the information you have marked under section 552.101 of the Government Code in conjunction with section 51.971 of the Education Code. The university must withhold the information you have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The university must withhold the information you have marked under section 552.117(a)(2) of the Government Code; however, the cellular telephone number you have marked may only be withheld if a governmental body does not pay for the cellular telephone service. The university must release the remaining information.⁴

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.

⁴We note the requestor has a right of access to some of the information being released pursuant to section 552.023 of the Government Code. *See Gov't Code* § 552.023(a) (person or person's authorized representative has special right of access to information held by governmental body that relates to person and that is protected from public disclosure by laws intended to protect person's privacy interests); *Open Records Decision No. 481 at 4 (1987)* (privacy theories not implicated when individual requests information concerning himself). Thus, the university must again seek a decision from this office if it receives another request for the same information from another requestor.

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,



Cristian Rosas-Grillet
Assistant Attorney General
Open Records Division

CRG/cbz

Ref: ID# 542184

Enc. Submitted documents

c: Requestor
(w/o enclosures)