



February 3, 2015

Ms. Ana Vieira
Senior Attorney & Public Information Coordinator
Office of General Counsel
The University of Texas System
201 West Seventh Street
Austin, Texas TX 78701-2902

OR2015-02114

Dear Ms. Vieira:

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# 552823 (OGC# 159251).

The University of Texas at Austin (the "university") received a request for eight categories of information pertaining to the requestor's claims against the university, including (1) documents and emails sent from or received by named individuals during a specified time period pertaining to the requestor's work performance and tenure, EEOC claim, and investigations conducted by the university's Office of Institutional Equity ("OIE"); (2) documents and emails between a specified committee during a specified time period pertaining to the requestor's work performance and tenure; (3) notes and meeting minutes from a specified committee's meeting pertaining to the requestor's tenure; (4) a list of all members of a specified committee for the 2014-2015 academic year; (5) the names and curriculum vitae of candidates for promotion to associate professor of a specified college during the 2014-2015 academic year, including a specified committee's voting tallies of the candidates; (6) tenure dossiers of named individuals; (7) promotion dossier of a named individual; and (8) documents and emails between members of the executive committee during a specified time period pertaining to a named individual's tenure dossier. You state the university will withhold information subject to section 552.117 of the Government Code

pursuant to section 552.024 of the Government Code.¹ You claim the requested information is excepted from disclosure under sections 552.101, 552.103, and 552.107 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.²

Initially, you state some of the requested information was the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2015-02025 (2015). In that ruling, we determined the university may withhold the submitted information under section 552.103(a) of the Government Code. We note the previous ruling encompasses pages 99 through 175 of the submitted documents. We have no indication the law, facts, or circumstances on which the prior ruling was based have changed. Accordingly, we conclude the university may withhold pages 99 through 175 on the basis of Open Records Letter No. 2015-02025.³ See Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). However, we will address your arguments for the remaining information not subject to Open Records Letter No. 2015-02025.

Next, we note the submitted information contains a completed report and evaluations subject to section 552.022 of the Government Code. Section 552.022(a)(1) provides for the required public disclosure of “a completed report, audit, evaluation, or investigation made of, for, or by a governmental body,” unless it is excepted by section 552.108 of the Government Code or made confidential under the Act or other law. Gov’t Code § 552.022(a)(1). Although you raise section 552.103 for this information, this section is a discretionary exception to disclosure and does not make information confidential under the Act. See *Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive Gov’t Code § 552.103); see also Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions). Thus, the university may not withhold the completed report or

¹Section 552.024(c)(2) of the Government Code authorizes a governmental body to redact information protected by section 552.117(a)(1) of the Government Code without the necessity of requesting a decision under the Act if the current or former employee or official to whom the information pertains timely chooses not to allow public access to the information. See Gov’t Code § 552.024(c)(2).

²We 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 that those records contain substantially different types of information than that submitted to this office.

³As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

evaluations under section 552.103 of the Government Code. However, because section 552.101 makes information confidential under the Act, we will address your argument under this section for the information subject to section 552.022. We will also address your arguments against disclosure for the information not subject to section 552.022.

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. This section encompasses information protected by other statutes, including section 51.971 of the Education Code. Section 51.971 of the Education Code provides, in relevant part, the following:

(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 the officers and employees of an institution of higher education with applicable laws, rules, regulations, and policies[.]” *Id.* § 51.971(a)(1). We note 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 remaining information pertains to an investigation into allegations of discrimination and retaliation. You state the investigation is being conducted by the university’s OIE. You inform us the remaining information pertains to allegations of ethical and standard of conduct violations relating to university employees. Based on your representations and our review, we agree the remaining information pertains to the university’s compliance program for purposes of section 51.971. *See id.* § 51.971(a). You inform this office the remaining information pertains to an ongoing compliance investigation. You also represent release of the information at this time would interfere with, and potentially compromise, the investigation. Accordingly, we conclude the university must withhold the remaining information under section 552.101 of the Government Code in conjunction with section 51.971(e)(1) of the Education Code.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.

⁴As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

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,



Lauren Dahlstein
Assistant Attorney General
Open Records Division

LMD/bhf

Ref: ID# 552823

Enc. Submitted documents

c: Requestor
(w/o enclosures)