



February 5, 2015

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

OR2015-02324

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# 552816 (OGC# 159232).

The University of Texas Medical Branch at Galveston (the "university") received a request for two reports into allegations of workplace misconduct involving a female employee against two named individuals. You claim 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.

Initially, you state some of the responsive information was the subject of a previous request for information in response to which this office issued Open Records Letter No. 2014-04326 (2014). In Open Records Letter No. 2014-04326, we ruled the university may withhold the information at issue in its entirety under section 552.101 of the Government Code in conjunction with section 51.971(c) of Texas Education Code. Upon review, we find the circumstances on which the prior ruling was based have changed. Therefore, the university may not rely on Open Records Letter No. 2014-04326 as a previous determination and we will address your arguments against disclosure of the submitted information. *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 a prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

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:

(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). You inform us 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 state the submitted information pertains to two investigations undertaken by the university's Office of Human Resources and were conducted in response to allegations against a university employee. You state the investigations were initiated in order to assess and ensure compliance with all applicable laws, rules, regulations, and policies. Based on your representations, we find this information relates to investigations conducted under the university's compliance program. *See id.* § 51.971(a)(1).

You seek to withhold the submitted information in its entirety. You claim, and have provided a statement from the investigator of the allegations at issue stating, only a small subset of individuals was involved in the investigations and release of any portion of the submitted information would directly or indirectly identify the individuals seeking guidance from or participating in the compliance program investigation. Further, you inform us both investigations were completed and the university found that the allegations were unsubstantiated. Accordingly, you assert release of the submitted information would directly or indirectly identify the individual who was alleged to have planned, initiated, or participated in activities that were the subject of these unsubstantiated allegations. We note the requestor has named the individual who was alleged to have planned, initiated, or participated in the activities that were the subject of these unsubstantiated allegations. You state none of the individuals involved have consented to the disclosure of their identifying information. *See id.* § 51.971(d). Based on your representations and our review, we agree the university must withhold the submitted information in its entirety under section 552.101 of the Government Code in conjunction with section 51.971 of the Education Code.¹

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

¹As our ruling is dispositive, we need not address your remaining arguments against disclosure.

providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Rahat Huq
Assistant Attorney General
Open Records Division

RSH/dls

Ref: ID# 552816

Enc. Submitted documents

c: Requestor
(w/o enclosures)