



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 14, 2015

Mr. Kyle St. Clair
Assistant General Counsel
University of North Texas System
1155 Union Circle, #310907
Denton, Texas 76203-5017

OR2015-09399

Dear Mr. St. Clair:

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# 563633 (Request No. 001410).

The University of North Texas Health Science Center (the "university") received a request for a specified investigation report. You state the university will release some information to the requestor. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code.¹ We have considered the exception you claim and reviewed the submitted representative sample of information.²

¹We note the university failed to comply with the procedural requirements of section 552.301 of the Government Code in requesting a decision from this office. *See* Gov't Code § 552.301(e) (requiring governmental body to submit within fifteen business days of receiving request for information comments explaining applicability of raised exceptions, copy of request for information, signed statement of date governmental body received request or evidence sufficient to establish date, and copy of information governmental body seeks to withhold or representative samples). Nonetheless, section 552.101 is a mandatory exception to disclosure that constitutes a compelling reason sufficient to overcome the presumption of openness caused by the failure to comply with section 552.301. *See id.* §§ 552.007, .302. Therefore, we will address the applicability of this exception to the submitted information.

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

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). 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 further state the submitted information documents a compliance investigation concerning allegations of standard of conduct violations reported to and investigated by a compliance office under the university's compliance program. Based on your representations and our review, we find the submitted information relates to an investigation conducted under the university's compliance program. *See id.* § 51.971(a)(1).

You state the submitted information pertains to a completed compliance investigation which concluded in a determination that the allegations were unsubstantiated. You further state the information you have marked reveals the identities of the individuals who participated in the investigation or the identities of the individuals who were accused of participating in activities that were the subject of a compliance report. We note subsection (c) does not apply to information related to an individual who consents to disclosure of the information. *Id.* § 51.971(d). You state none of the individuals whose information you have marked have consented to the release of their information. Upon review, we agree the release of some of the information you have marked, as well as the additional information we have marked, would directly or indirectly identify individuals who participated in a compliance investigation or individuals alleged to have participated in activities that were the subject of unsubstantiated allegations. *See id.* § 51.971(c). However, the remaining information you have marked does not directly or indirectly identify any individual. This information, which we have marked for release, is not made confidential by section 51.971 of the Education Code. Accordingly, with the exception of the information we have marked for release, the university must withhold the information you have marked, as well as the information we have marked, under section 552.101 of the Government Code in conjunction with section 51.971(c) of the Education Code. As you raise no other exceptions to disclosure, the university must release the remaining information.³

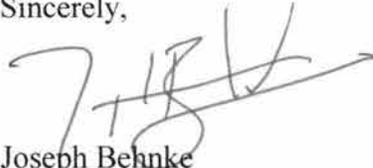
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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/>

³We note the requestor has a right of access to some of the information being released. *See* Educ. Code § 51.971(d); *see also* Gov't Code § 552.023(a) (person has special right of access, beyond right of general public, to information held by governmental body that relates to person and 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 herself). Thus, if the university receives another request for this information from a different requestor, the university must seek another ruling from this office.

[ori_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,

A handwritten signature in black ink, appearing to read 'J. Behnke', with a long horizontal stroke extending to the right.

Joseph Behnke
Assistant Attorney General
Open Records Division

JB/dls

Ref: ID# 563633

Enc. Submitted documents

c: Requestor
(w/o enclosures)