



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 11, 2015

Ms. Idolina Garcia
Associate General Counsel
Office of General Counsel
University of North Texas System
1155 Union Circle, Suite 700
Denton, Texas 76203-5017

OR2015-16523

Dear Ms. Garcia:

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# 575281 (UNT Public Information Request No. 003264).

The University of North Texas System (the "system") received a request for the number of complaints filed against system faculty for sexual harassment during a specified time period. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.114 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted representative sample of information.²

You raise section 552.114 of the Government Code for the requested information. *See* Gov't Code §§ 552.026 (incorporating FERPA into the Act), .114 (excepting from disclosure "student records"); Open Records Decision No. 539 (1990) (determining the same

¹Although you also claim section 552.026 of the Government Code, we note section 552.026 is not an exception to disclosure. Rather, section 552.026 provides the Act does not require the release of information contained in education records except in conformity with the Family Educational Rights and Privacy Act of 1974. Gov't Code § 552.026.

²We assume that 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.

analysis applies under section 552.114 of the Government Code and FERPA). We note the United States Department of Education Family Policy Compliance Office has informed this office FERPA does not permit state and local educational authorities to disclose to this office, without parental or student consent, unredacted, personally identifiable information contained in education records for the purpose of our review in the open records ruling process under the Act.³ Consequently, state and local educational authorities that receive a request for education records from a member of the public under the Act must not submit education records to this office in unredacted form, that is, in a form in which “personally identifiable information” is disclosed. *See* 34 C.F.R. § 99.3 (defining “personally identifiable information”). Because our office is prohibited from reviewing education records to determine whether appropriate redactions under FERPA have been made, we will not address the applicability of FERPA. Such determinations under FERPA must be made by the educational authority in possession of the education records.⁴ Should the system determine all or portions of the requested information consist of “education records” that must be withheld under FERPA, the system must dispose of any such information in accordance with FERPA, rather than the Act.

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.

³A copy of this letter may be found on the Office of the Attorney General’s website: <http://www.oag.state.tx.us/open/20060725usdoe.pdf>.

⁴In the future, if the system does obtain parental or student consent to submit unredacted education records and the system seeks a ruling from this office on the proper redaction of those education records in compliance with FERPA, we will rule accordingly.

(2) “Institution of higher education” has the meaning assigned by Section 61.003.

...

(e) Information is excepted from disclosure under [the Act] if it is collected or produced:

...

(2) by a systemwide compliance office for the purpose of reviewing compliance processes at a component institution of higher education of a university system.

Educ. Code § 51.971(a), (e)(2). You state the system 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 information you have marked consists of allegations of violations of the system’s standards of conduct by system employees. In response to the allegations, you state the system’s Office of Equal Opportunity, as part of the system’s compliance program, initiated internal investigations to assess and ensure employees’ compliance with applicable laws, rules, regulations, and policies. You explain the information at issue was collected pursuant to these investigations. Based on your representations and our review, we conclude the system must withhold the information you have marked under section 552.101 of the Government Code in conjunction with section 51.971(e)(2) of the Education Code.⁵

Section 552.101 of the Government Code also encompasses the common-law right to privacy, which protects information if it (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. *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 met. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. This office has concluded information that either identifies or tends to identify a victim of sexual assault or other sex-related offense must be withheld under common-law privacy. Open Records Decision No. 393 at 2 (1983); *see also Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.—El Paso 1992, writ denied) (identity of witnesses to and victims of sexual harassment was highly intimate or embarrassing information and public did not have a legitimate interest in such information). Accordingly, the system must withhold the remaining information you have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

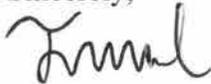
⁵As our ruling is dispositive for this information, we need not address your remaining argument against its disclosure.

In summary, the system must withhold the information you have marked under section 552.101 of the Government Code in conjunction with section 51.971(e)(2) of the Education Code and the remaining information you have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The system must release the remaining information.

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,



Tim Neal
Assistant Attorney General
Open Records Division

TN/bhf

Ref: ID# 575281

Enc. Submitted documents

c: Requestor
(w/o enclosures)