



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 15, 2015

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

OR2015-21611

Dear Ms. Ayala:

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# 583232 (OGC #163452).

The University of Texas at Austin (the "university") received a request for the personnel files of two named former employees, including disciplinary records. You state you will release some information to the requestor. You state the university will redact information pursuant to the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232g(a).¹ You state the university will redact information protected by section 552.117(a)(1) of the Government Code pursuant to section 552.024(c)(2) of the Government Code, motor vehicle record information under section 552.130(c) of the Government Code, and personal e-mail addresses under section 552.137 of the Government Code pursuant to Open Records

¹The United States Department of Education Family Policy Compliance Office (the "DOE") has informed this office FERPA does not permit state and local educational authorities to disclose to this office, without parental or an adult student's consent, unredacted, personally identifiable information contained in education records for the purpose of our review in the open records ruling process under the Act. The DOE has determined FERPA determinations must be made by the educational authority in possession of the educational records. We have posted a copy of the letter from the DOE on the Attorney General's website at <http://www.oag.state.tx.us/open/20060725usdoe.pdf>.

Decision No. 684 (2009).² You claim some of the submitted information is not subject to the Act. You also claim some of the submitted information is excepted from disclosure under sections 552.101 and 552.102 of the Government Code. We have considered your arguments and reviewed the submitted representative sample of information.³

You argue some of the submitted information is not subject to the Act. The Act applies only to “public information.” *See* Gov’t Code § 552.021. Section 552.002(a) defines “public information” as:

[I]nformation that is written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

- (1) by a governmental body;
- (2) for a governmental body and the governmental body:
 - (A) owns the information;
 - (B) has a right of access to the information; or
 - (C) spends or contributes public money for the purpose of writing, producing, collecting, assembling, or maintaining the information; or

²Section 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). Section 552.130(c) of the Government Code allows a governmental body to redact the information described in subsection 552.130(a) without the necessity of seeking a decision from the attorney general. *See id.* § 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). Open Records Decision No. 684 serves as a previous determination to all governmental bodies authorizing them to withhold certain categories of information, including personal e-mail addresses under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision. *See* ORD 684.

³We 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.

(3) by an individual officer or employee of a governmental body in the officer's or employee's official capacity and the information pertains to official business of the governmental body.

Id. § 552.002(a). In Open Records Decision No. 581 (1990), this office determined that certain computer information, such as source codes, documentation information, and other computer programming, that has no significance other than its use as a tool for the maintenance, manipulation, or protection of public property is not the kind of information made public under section 552.021 of the Government Code. We understand that when combined with an individual's password, the University of Texas Electronic Identification Number ("UTEID") serves as "the required log on protocol to access the computer mainframe, the [s]ystem's centralized hub that runs all its high-level electronic functions." We also understand the UTEID is used solely to access the system's computer mainframe and that the UTEID has no other significance other than their use as tools for the maintenance, manipulation, or protection of public information. Based on your representations and our review, we find the UTEID contained in the submitted information does not constitute public information under section 552.002 of the Government Code. Therefore, we conclude the UTEID is not subject to the Act and need not be released to the requestor.

Next, you explain the portion of the e-mail you have marked contains purely personal exchanges that have no connection with the transaction of official business of the system. *See* Open Records Decision No. 635 (1995) (statutory predecessor not applicable to personal information unrelated to official business and created or maintained by state employee involving *de minimis* use of state resources). Upon review of the marked information, we agree the information does not constitute "information that is written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business" by or for the system. *See* Gov't Code § 552.021. Thus, we conclude the information you have marked is not subject to the Act and need not be released in response to this request.

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 section 51.971 of the Education Code, which provides:

(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:

...

(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)(2), (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). The submitted information consists of a completed investigation undertaken by the university's Department of Internal Investigations. In response to the discrimination allegation, you state the university "initiated its internal review processes to assess and ultimately, ensure compliance with all applicable laws, rules, regulations, and policies." We agree the submitted information pertains to the university's compliance program for the purposes of section 51.971. *See id.* § 51.971(a).

You seek to withhold portions of the submitted information under section 51.971(c) of the Education Code. You explain that due to the targeted nature of the request, releasing the information at issue that reveals the investigation into the unsubstantiated allegations would reveal the individuals who allegedly planned, initiated, or participated in activities that were the subject of a report to the university's compliance program. We note the requestor has named the individuals who were alleged to have planned, initiated, or participated in the activities that were the subject of these unsubstantiated allegations. You do not indicate any

of the individuals at issue have consented to release of their information. *Id.* § 51.971(d). Based on your representations and our review, we agree the university must withhold the information you have indicated 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 chapter 411 of the Government Code, which makes confidential criminal history record information (“CHRI”) generated by the National Crime Information Center or by the Texas Crime Information Center. *See* Gov’t Code § 411.083(a). Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual laws with respect to the CHRI it generates. *See id.* Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety (“DPS”) maintains, except that DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See* Gov’t Code § 411.083. Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090-.127. Thus, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 in conjunction with chapter 411, subchapter F of the Government Code. Upon review, we find the information you have marked consists of CHRI the university must withhold under section 552.101 in conjunction with section 411.083 of the Government Code and federal law.

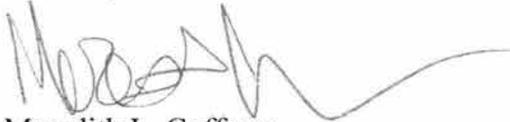
Section 552.102(a) of the Government Code excepts from disclosure “information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.” Gov’t Code § 552.102(a). The Texas Supreme Court held section 552.102(a) excepts from disclosure the dates of birth of state employees in the payroll database of the Texas Comptroller of Public Accounts. *Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex.*, 354 S.W.3d 336 (Tex. 2010). Upon review, we agree the university must withhold the date of birth you have marked under section 552.102(a) of the Government Code.

In summary, the UTEID and the information you have marked are not subject to the Act and need not be released to this requestor. The university must withhold the information you have indicated 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 section 411.083 of the Government Code and federal law. The university must withhold the date of birth you have marked under section 552.102(a) of the Government Code. The university 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,

A handwritten signature in black ink, appearing to read 'Meredith L. Coffman', with a long, sweeping horizontal line extending to the right.

Meredith L. Coffman
Assistant Attorney General
Open Records Division

MLC/dls

Ref: ID# 583232

Enc. Submitted documents

c: Requestor
(w/o enclosures)