



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

December 17, 2015

Mr. Renaldo Stowers  
Senior Associate General Counsel  
Office of General Counsel  
The University of North Texas System  
1155 Union Circle, # 310907  
Denton, Texas 76203

OR2015-26538

Dear Mr. Stowers:

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# 591161 (UNT Public Information Request No. 003505).

The University of North Texas System (the "system") received a request for all complaints filed by faculty members with the system's Human Resources Department during a specified time period. You claim the requested information is excepted from disclosure under sections 552.101 and 552.107 of the Government Code. We have considered the exceptions you claim.

Initially, we note a portion of the requested information may have been the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2015-16523 (2015). In this ruling, we determined the system must: (1) withhold certain information under section 552.101 of the Government Code in conjunction with section 51.971(e)(2) of the Education Code, (2) withhold certain information under section 552.101 of the Government Code in conjunction with common-law privacy, and (3) release the remaining information. We have no indication there has been any change in the law, facts, or circumstances on which the previous ruling was based. Accordingly, to the extent the requested information is identical to the information previously requested and ruled upon by this office, we conclude the system must continue to rely on Open Records Letter No. 2015-16523 as a previous determination and withhold or release the identical

information in accordance with that ruling. *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 information is or is not excepted from disclosure).

Next, we must address the system's obligations under the Act. Section 552.301 of the Government Code prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving an open records request (1) written comments stating the reasons why the claimed exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. Gov't Code § 552.301(e). You state the system received the request for information on September 22, 2015. We note the system sought and received clarification of the requested information on the same day. *See id.* § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); *see also City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or over-broad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed). As of the date of this letter, you have not submitted to this office written comments stating why the stated exceptions apply or a copy or representative sample of the information requested. Accordingly, we conclude the system failed to comply with the requirements of section 552.301.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See* Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 319 (1982). A compelling reason exists when third-party interests are at stake or when information is confidential under other law. Open Records Decision No. 150 (1977). Although you claim the requested information is excepted from disclosure under section 552.107(1) of the Government Code, this section is a discretionary exception that protects a governmental body's interests and may be waived. *See* Open Records Decision Nos. 676 at 12 (2002) (claim of attorney-client privilege under section 552.107 or rule 503 does not provide compelling reason to withhold information under section 552.302 if it does not implicate third-party rights), 665 at 2 n.5 (2000)

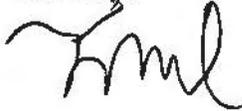
(discretionary exceptions in general). Thus, in failing to comply with section 552.301, you have waived your claim under section 552.107(1). You also raise section 552.101 of the Government Code. This exception can provide a compelling reason for non-disclosure under section 552.302. In this instance, however, you have not submitted any of the responsive information, and we thus have no basis to conclude this exception is applicable. Thus, we have no choice but to order the system to release the remaining requested information in accordance with section 552.302 of the Government Code. If you believe this information is confidential and may not lawfully be released, you must challenge this ruling in court pursuant to section 552.324 of the Government Code.

In summary, to the extent the requested information is identical to the information previously requested and ruled upon by this office, we conclude the system must continue to rely on Open Records Letter No. 2015-16523 as a previous determination and withhold or release the identical information in accordance with that ruling. The system must release the remaining information in accordance with section 552.302 of the Government Code.

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](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# 591161

Enc. Submitted documents

c: Requestor