



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 28, 2016

Ms. Jennifer Burnett
Attorney
Office of General Counsel
The University of Texas System
201 West Seventh Street
Austin, Texas 78701-2902

OR2016-06822

Dear Ms. Burnett:

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# 602979 (UT OGC # 166918).

The University of Texas Medical Branch at Galveston (the "university") received a request for information pertaining to a specified investigation. You claim some of the submitted information is exempted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 of the Government Code exempts 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 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 consists of a completed investigation conducted by the university's Department of Internal Investigations, which was initiated in response to an allegation of retaliation. Accordingly, 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 claim portions of the submitted information are subject to section 51.971(c). Section 51.971(c)(1) makes confidential information that identifies individuals as complainants, as having sought guidance from a compliance program, or as participants in an investigation conducted under a compliance program. *Id.* § 51.971(c)(1). Section 51.971(c)(2) makes confidential information that identifies individuals alleged to have committed the activities that are the subject of a complaint made to a compliance program office if the office determines the report is unsubstantiated or without merit. *Id.* § 51.971(c)(2). However, subsection (c) does not apply to information related to an individual who consents to disclosure of the information. *Id.* § 51.971(d). You state the investigation at issue concluded in a determination the allegation at issue was unsubstantiated. Upon review, we agree portions of the submitted information identify

individuals as participants in the compliance program investigation or as individuals alleged to have committed the activity that is the subject of the unsubstantiated complaint. We understand these individuals have not consented to release of their information. However, as you acknowledge, the requestor is the complainant at issue and has a right of access to her information pursuant to section 51.971(d). *Cf.* Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). Further, we find you have not demonstrated some of the information you have marked directly or indirectly reveals the identities of the individuals at issue. Consequently, we find you have failed to show this information, which we have marked for release, is confidential under section 51.971, and the university may not withhold it under section 552.101 on that basis. We conclude, with the exception of the information we have marked for release, the university must withhold the information you have marked and the additional information we have marked for withholding under section 552.101 in conjunction with section 51.971(c). As no other exceptions to disclosure have been raised, the remaining information must be released.

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,



Lindsay E. Hale
Assistant Attorney General
Open Records Division

LEH/akg

Ref: ID# 602979

Enc. Submitted documents

c: Requestor
(w/o enclosures)