



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 20, 2016

Ms. Ana Vieira Ayala
Senior Attorney & Public Information Coordinator
Office of General Counsel
The University of Texas System
201 West Seventh Street
Austin, Texas 78701-2902

OR2016-08911

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# 606650 (OGC# 167402).

The University of Texas at Dallas (the "university") received a request for information pertaining to a specified incident report. You state the university does not maintain some of the requested information.¹ You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.²

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,

¹The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

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

including section 51.971 of the Education Code. Section 51.971 of the Education Code provides, in pertinent 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 also state the submitted information pertains to a completed investigation of allegations of sexual harassment conducted by the university’s Office of Institutional Equity. You inform us the

university conducts an internal process of review to assess sexual harassment complaints to ultimately ensure that its employees complied with all applicable law, rules, regulations and policies relating to sexual harassment. Thus, we agree the submitted information pertains to the university's compliance program for the purposes of section 51.971 of the Education Code. *See id.* § 51.971(a).

You seek to withhold the submitted information in its entirety. You claim only a small subset of individuals were involved in the investigation and release of any portion of the submitted information would directly or indirectly identify the individuals seeking guidance from or participating in the compliance program investigation. Further, you inform us the investigation was completed and the university found that the allegations were unsubstantiated. Accordingly, you assert release of the submitted information would directly or indirectly identify the individual who was alleged to have planned, initiated, or participated in activities that were the subject of these unsubstantiated allegations. We note the requestor has named an individual who sought guidance from or participated in the compliance program investigation. You state none of the individuals involved have consented to the disclosure of their identifying information. *See id.* § 51.971(d). Based on your representations and our review, we agree the university must withhold the submitted information in its entirety under section 552.101 of the Government Code in conjunction with section 51.971 of the Education Code.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/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,



Cole Hutchison
Assistant Attorney General
Open Records Division

CH/bhf

³As our ruling is dispositive, we need not address your remaining argument against disclosure of the submitted information.

Ref: ID# 606650

Enc. Submitted documents

c: Requestor
(w/o enclosures)