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ATTORNEY GENERAL OF TEXAS

May 10, 2016

Mr. R. Brooks Moore
Managing Counsel, Governance
The Texas A&M University System
301 Tarrow Street, Sixth Floor
College Station, Texas 77840-7896

OR2016-10562

Dear Mr. Moore:

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# 609594 (#W000407-021716).

Tarleton State University (the "university") received a request for the results of specified complaints and investigations. You claim portions of the submitted information are excepted from disclosure under section 552.101 of the Government Code.¹ We have considered the exception you claim and reviewed the submitted information.

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 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

¹We note the university failed to comply with the procedural requirements of section 552.301 of the Government Code in requesting a decision from this office. *See* Gov't Code § 552.301(b) (requiring governmental body to ask for ruling and state exceptions that apply within ten business days of receiving written request). Nonetheless, section 552.101 of the Government Code is a mandatory exception that can provide a compelling reason to overcome the presumption of openness caused by a failure to comply with section 552.301. *See id.* §§ 552.007, .302. Thus, we will address the applicability of this exception to the submitted information, notwithstanding the university's violation of section 552.301 in requesting this decision.

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). We understand 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 completed investigations you state were initiated in response to allegations of civil rights and standard of conduct violations reported to the university's police department (the "department"). You explain the department conducted the investigations as part of the university's compliance program. Accordingly, we agree the information at issue pertains to the university's compliance program for the purposes of section 51.971. *See id.* § 51.971(a).

You state the investigations have concluded and releasing the information you have marked would directly or indirectly reveal the identities of individuals who reported the conduct at issue, participated in a compliance program investigation, or were alleged to have participated in the activities subject to the complaints at issue. Subsection (c) does not apply to information related to an individual who consents to disclosure of the information. *Id.* § 51.971(d). We note the requestor is one of the complainants at issue. Thus, pursuant to section 51.971(d), we find the requestor has a right of access to his information and it may not be withheld from him under section 51.971(c). *Cf.* Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). You state some of the allegations at issue were unsubstantiated. However, you also state one of the complaints at issue was substantiated. As we are unable to determine which complaint against an employee whose information you have marked was substantiated, we must rule conditionally. To the extent the complaints against the individuals at issue were determined to be unsubstantiated or without merit, the university must withhold the identities of these individuals, which you have marked, under section 552.101 in conjunction with section 51.971(c)(2). To the extent a complaint against an individual was substantiated, the university may not withhold the identifying information of this individual in the investigation at issue under section 552.101 in conjunction with section 51.971(c)(2). We agree release of the remaining information you have marked and the additional information we have marked would directly or indirectly identify individuals who reported the conduct at issue or participants in the compliance program investigations. *See* Educ. Code § 51.971(c)(1). Thus, the university must withhold this information under section 552.101 in conjunction with section 51.971(c)(1).

Section 552.117(a)(2) of the Government Code applies to records a governmental body holds in an employment capacity and excepts from public disclosure the current and former home addresses and telephone numbers, emergency contact information, social security number, and family member information of a peace officer, regardless of whether the peace officer made an election under section 552.024 or section 552.1175 of the Government Code to keep such information confidential.² Gov't Code § 552.117(a)(2). Section 552.117(a)(2) applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure. *Id.* Accordingly, the university must withhold the information we have marked under section 552.117(a)(2).

In summary, to the extent the complaints against the individuals at issue were determined to be unsubstantiated or without merit, the university must withhold the identities of these individuals, which you have marked, under section 552.101 of the Government Code in conjunction with section 51.971(c)(2) of the Education Code; however, to the extent a complaint against an individual was substantiated, the university may not withhold the identifying information of this individual under section 552.101 in conjunction with

²The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

section 51.971(c)(2). The university must withhold the information you have marked and the additional information we have marked that identify individuals who reported the conduct at issue or were participants in the compliance program investigations under section 552.101 of the Government Code in conjunction with section 51.971(c)(1) of the Education Code. The university must withhold the information we have marked under section 552.117(a)(2) of the Government Code. The university must release the remaining information.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,



Matthew Taylor
Assistant Attorney General
Open Records Division

MHT/dls

Ref: ID# 609594

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³Because the requestor has a right of access beyond that of the general public to portions of the information being released, if the university receives another request for this information from an individual other than this requestor, the university must again seek a ruling from this office. See Educ. Code § 51.971(d); cf. ORD 481.