



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 23, 2016

Ms. Katherine Antwi Green
Associate General Counsel
University of North Texas System
1155 Union Circle, #310907
Denton, Texas 76203-5017

OR2016-11777

Dear Ms. Green:

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# 611308 (UNT System PIR No. 001091).

The University of North Texas System (the "system") received a request for information pertaining to specified job postings; e-mails, including attachments, between the requestor and three named individuals; additional specified e-mail attachments; and e-mails, e-mail attachments, and Skype conversations involving a named individual that contain specified words over a specified time period. You state you will release some information. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.116 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

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

¹We 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.

section 51.971 of the Education Code. Section 51.971 of the Education Code 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.

...

(e) Information is excepted from disclosure under [the Act] if it is collected or produced:

...

(2) by a systemwide compliance office for the purpose of reviewing compliance processes at a component institution of higher education of a university system.

Educ. Code § 51.971(a), (e)(2). You state the system is an institution of higher education for purposes of section 61.003 of the Education Code. *See id.* § 51.971(a)(2). You indicate the information at issue pertains to allegations of violations of the system’s standards of conduct by system employees. In response to the allegations, you state the system’s human resources department, as part of the system’s compliance program, conducted an investigation in “in order to assess and ultimately ensure that the [s]ystem has complied with all applicable law[s], rules, regulations and policies.” You explain the information at issue was collected or produced pursuant to this investigation. Based on your representations and our review, we conclude the system must withhold representative sample A under section 552.101 of the Government Code in conjunction with section 51.971(e)(2) of the Education Code.

Section 552.116 of the Government Code provides the following:

(a) An audit working paper of an audit of the state auditor or the auditor of a state agency, an institution of higher education as defined by Section 61.003, Education Code, a county, a municipality, a school district, a hospital district, or a joint board operating under Section 22.074, Transportation Code, including any audit relating to the criminal history background check of a public school employee, is excepted from the requirements of Section 552.021. If information in an audit working paper is also maintained in another record, that other record is not excepted from the requirements of Section 552.021 by this section.

(b) In this section:

(1) "Audit" means an audit authorized or required by a statute of this state or the United States, the charter or an ordinance of a municipality, an order of the commissioners court of a county, the bylaws adopted by or other action of the governing board of a hospital district, a resolution or other action of a board of trustees of a school district, including an audit by the district relating to the criminal history background check of a public school employee, or a resolution or other action of a joint board described by Subsection (a) and includes an investigation.

(2) "Audit working paper" includes all information, documentary or otherwise, prepared or maintained in conducting an audit or preparing an audit report, including:

(A) intra-agency and interagency communications; and

(B) drafts of the audit report or portions of those drafts.

Gov't Code § 552.116. You state representative sample B consists of e-mails "listing information system officials were asked to provide as part of an audit review[.]" You explain the information contains notices it is part of audit working papers of the system's Internal Audit Office. You further inform us, and provide documentation showing, the audits were authorized by the system's rules 03.702 and 04.500 of the Rules of the Board of Regents of the University of North Texas. However, in this case, the requestor specifically seeks certain e-mails and does not specifically ask for audit working papers. Upon review, we find the information at issue is maintained independently of the audit working papers. Section 552.116 does not apply to records that exist independently of the audit working papers. *See id.* § 552.116(a) (if information in an audit working paper is also maintained in another record, that other record is not excepted from public disclosure by section 552.116).

Accordingly, the system may not withhold representative sample B under section 552.116 of the Government Code.

In summary, the system must withhold representative sample A under section 552.101 of the Government Code in conjunction with section 51.971(e)(2) of the Education Code. 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,



Matthew Taylor
Assistant Attorney General
Open Records Division

MHT/dls

Ref: ID# 611308

Enc. Submitted documents

c: Requestor
(w/o enclosures)