



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

May 25, 2016

Mr. Renaldo Stowers  
Senior Associate General Counsel  
University of North Texas System  
1155 Union Circle, #310907  
Denton, Texas 76203-5017

OR2016-12032

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# 611906 (UNT PIR No. 003840).

The University of North Texas (the "university") received a request for the personnel file of a former university employee and information pertaining to a specified investigation concerning the named former employee. You state you will release some information. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.103 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>1</sup>

Initially, we note some of the submitted information, which we have marked, is not responsive to the present request for information because it was created after the present request for information was received. This ruling does not address the public availability of

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<sup>1</sup>We assume that 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.

any information that is not responsive to the request, and the university need not release such information in response to this request.

Next, we note portions of the information at issue are subject to section 552.022 of the Government Code. Section 552.022(a) provides, in relevant part:

(a) [T]he following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108; [and]

...

(17) information that is also contained in a public court record[.]

Gov't Code § 552.022(a)(1), (17). The submitted information contains a completed investigation which the university must release pursuant to section 552.022(a)(1) unless it is excepted from disclosure under section 552.108 of the Government Code or expressly made confidential under the Act or other law. *See id.* § 552.022(a)(1). The submitted information also contains a court-filed document that is subject to section 552.022(a)(17) and must be released unless it is made confidential under the Act or other law. *See id.* § 552.022(a)(17). Although you seek to withhold this information under section 552.103 of the Government Code, this section is a discretionary exception and does not make information confidential under the Act. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive Gov't Code § 552.103); Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 524 at 4 (1990) (statutory predecessor to section 552.103 may be waived), 663 at 5 (1999) (waiver of discretionary exceptions). Therefore, the university may not withhold the information subject to section 552.022 under section 552.103. However, you also raise section 552.101 of the Government Code for the information subject to section 552.022(a)(1). Because section 552.101 protects information made confidential under law, we will consider your argument under section 552.101 for this information. We will also address your arguments against disclosure of the responsive information not subject to section 552.022.

Section 552.103 of the Government Code provides as follows:

(a) Information is excepted from [required public disclosure] if it is information relating to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party or to which an officer or

employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party.

...

(c) Information relating to litigation involving a governmental body or an officer or employee of a governmental body is excepted from disclosure under Subsection (a) only if the litigation is pending or reasonably anticipated on the date that the requestor applies to the officer for public information for access to or duplication of the information.

Gov't Code § 552.103(a), (c). A governmental body has the burden of providing relevant facts and documents to show the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing (1) litigation was pending or reasonably anticipated on the date the governmental body received the request for information, and (2) the information at issue is related to that litigation. *Univ. of Tex. Law Sch. v. Tex. Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.—Austin 1997, orig. proceeding); *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.—Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). A governmental body must meet both prongs of this test for information to be excepted under section 552.103(a).

You contend the responsive information not subject to section 552.022 is related to pending litigation to which the university is a party. You inform us, and have provided documentation demonstrating, litigation styled *Jane Doe v. The University of North Texas*, Case No. 4:16 cv-00138, was pending in the United States District Court for the Eastern District of Texas, Sherman Division, at the time the university received the instant request. Based on your representations, the submitted supporting documentation, and our review of the information at issue, we find litigation was pending when the university received this request for information, and the information at issue is related to the pending litigation for the purposes of section 552.103. Therefore, the university may withhold the responsive information not subject to section 552.022 under section 552.103(a) of the Government Code.<sup>2</sup>

Generally, however, once information has been obtained by all parties to the litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided to the opposing parties in the litigation is not excepted from disclosure under section 552.103(a), and it must be disclosed. Further, the

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<sup>2</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

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 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 explain the information submitted as Representative Samples 1 through 4 pertains to a compliance investigation conducted by the university's Office of Equal Opportunity (the "office"), which enforces the university's equal opportunity policies and investigates complaints of discrimination, harassment, and retaliation. Based on your representations and our review, we find the information at issue pertains to the university's compliance program for the purposes of section 51.971. *See id.* § 51.971(a). 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. *Id.* § 51.971(c)(2). You state the investigation at issue concluded in a determination that the report was unsubstantiated. Upon review, we agree the information we have marked identifies 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. Accordingly, we find the university must withhold the information we have marked under section 552.101 in conjunction with section 51.971(c) of the Education Code. However, you have failed to demonstrate the remaining responsive information for which you raise section 51.971 is information that would directly or indirectly reveal the identities of the individuals who made the complaints, sought guidance from the compliance program office, participated in the investigation, or is alleged to have or may have planned, initiated, or participated in activities that are the subject of the report. Consequently, you have failed to show the remaining responsive information at issue is confidential under section 51.971 of the Education Code, and the university may not withhold it under section 552.101 of the Government Code on that basis.

In summary, the university must release the information we marked pursuant to sections 552.022(a)(1) and 552.022(a)(17) of the Government Code; however, in releasing the information subject to section 552.022(a)(1) the university must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 51.971(c) of the Education Code. The university may withhold the responsive information not subject to section 552.022 under section 552.103(a) of the Government Code. The remaining responsive 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](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# 611906

Enc. Submitted documents

c: Requestor  
(w/o enclosures)