



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 19, 2016

Ms. Jennifer Burnett
Attorney & Public Information Coordinator
Office of General Counsel
The University of Texas System
201 West 7th Street, Suite 600
Austin, Texas 78701

OR2016-21111

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# 627233 (OGC# 170407).

The University of Texas Southwestern Medical Center (the "university") received a request for information pertaining to a named former employee. You state you have released some information. 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 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 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.

...

(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[.]

...

(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)(1), (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). You state the submitted information pertains to a compliance investigation into employee misconduct undertaken by the university's Office of Employee Relations. You state the purpose of this investigation was to assess and ensure compliance with all applicable laws, policies, ethics, and standards of conduct. Based on your representations and our review, we find the information at issue relates to an investigation conducted under the university's compliance program. *See id.* § 51.971(a)(1).

You assert portions of the submitted information are confidential under section 51.971(c)(1) of the Education Code. You state only a small subset of individuals were involved in the investigation. You state the requestor has knowledge of the identities of the involved individuals and the events at issue. You state release of the information at issue would directly or indirectly identify the individuals who sought guidance from or participated in the

compliance program investigation. We understand none of the individuals at issue have consented to release of their information. Based on your representations and our review, we agree release of the information at issue would directly or indirectly identify individuals as participants in the compliance program investigation. *See* Educ. Code § 51.971(c). Accordingly, this information is confidential under section 51.971 of the Education Code. Therefore, the university must withhold the information you have marked under section 552.101 of the Government Code in conjunction with section 51.971 of the Education Code.

Section 552.101 of the Government Code also encompasses federal law such as the Family and Medical Leave Act (“FMLA”). *See* 29 U.S.C. §§ 2601 *et. seq.* Section 825.500 of chapter V of title 29 of the Code of Federal Regulations identifies the record-keeping requirements for employers that are subject to the FMLA. Subsection (g) of section 825.500 states:

[r]ecords and documents relating to certifications, recertifications or medical histories of employees or employees’ family members, created for purposes of FMLA, shall be maintained as confidential medical records in separate files/records from the usual personnel files, and if the [Americans with Disabilities Act (the “ADA”)], as amended, is also applicable, such records shall be maintained in conformance with ADA confidentiality requirements[], except that:

- (1) Supervisors and managers may be informed regarding necessary restrictions on the work or duties of an employee and necessary accommodations;
- (2) First aid and safety personnel may be informed (when appropriate) if the employee’s physical or medical condition might require emergency treatment; and
- (3) Government officials investigating compliance with FMLA (or other pertinent law) shall be provided relevant information upon request.

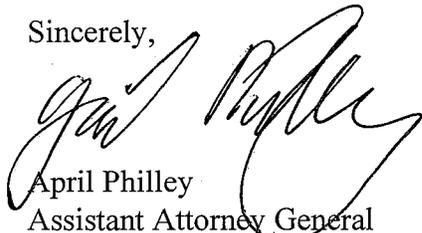
29 C.F.R. § 825.500(g). You assert some of the submitted documents, which you have marked, are confidential under the FMLA. Upon review, we agree this information is confidential under section 825.500 of title 29 of the Code of Federal Regulations. Furthermore, we find none of the release provisions of the FMLA apply to this information. Accordingly, the university must withhold the information you have marked under section 552.101 of the Government Code in conjunction with the FMLA.

In summary, the university must withhold the information you have marked under section 552.101 of the Government Code in conjunction with section 51.971(c) of the Education Code. The university must withhold the information you have marked under section 552.101 of the Government Code in conjunction with the FMLA.¹

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,



April Philley
Assistant Attorney General
Open Records Division

AP/eb

Ref: ID# 627233

Enc. Submitted documents

c: Requestor
(w/o enclosures)

¹As our ruling is dispositive, we need not address your remaining arguments against disclosure.