



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 3, 2009

Ms. Neera Chatterjee
Public Information Coordinator
Office of General Counsel
The University of Texas System
201 West Seventh Street
Austin, Texas 78701-2902

OR2009-17124

Dear Ms. Chatterjee:

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# 363114.

The University of Texas (the "university") received a request for information related to certain individuals and the university's diving program over a specified time frame. You state that the university will release some information. You claim that portions of the submitted information are not subject to the Act and that other portions are excepted from disclosure under sections 552.101, 552.107, and 552.137 of the Government Code. We have considered your arguments and reviewed the submitted information.¹

The Act is applicable to "public information." *See* Gov't Code § 552.021. Section 552.002 of the Act provides that "public information" consists of "information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business: (1) by a governmental body; or (2) for a governmental body and the

¹To the extent the submitted information constitutes a representative sample of the requested information, this ruling assumes that the submitted information is truly representative of the requested information as a whole. This ruling neither reaches nor authorizes the city to withhold any information that is substantially different from the submitted information. *See* Gov't Code §§ 552.301(e)(1)(D), .302; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

governmental body owns the information or has a right of access to it.” *Id.* § 552.002(a). You inform us that the information you have marked relates solely to the involved employee’s family or personal life and assert that it therefore is not maintained under a law or ordinance or in connection with the transaction of official university business. After reviewing the information at issue, we agree that the information you have marked does not constitute “information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business” by or for the university. *See* Gov’t Code § 552.021; *see also* Open Records Decision No. 635 (1995) (statutory predecessor not applicable to personal information unrelated to official business and created or maintained by state employee involving *de minimis* use of state resources). Therefore, we conclude that the information you have marked is not subject to the Act and need not be released in response to this request.²

You assert that the remainder of the information at issue is excepted from required public disclosure under section 552.101 of the Government Code in conjunction with section 51.971 of the Education Code. Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. Section 51.971 provides in part:

(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.

...

(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

²In light of this conclusion, we need not address your alternative argument against disclosure of this information.

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.

(e) Information produced in a compliance program investigation the release of which would interfere with an ongoing compliance investigation is excepted from disclosure under Chapter 552, Government Code.

Educ. Code § 51.971. You state that the remaining information at issue “relates to an ongoing compliance investigation” and argue that release at this time “would interfere with the [u]niversity’s ability to continue its investigation and render a decision because it will be more difficult for the University to receive unbiased information from the individuals relevant to the investigation.” Thus, we agree that the remaining information pertains to the university’s compliance program for purposes of section 51.971. *See id.* § 51.971(a). You do not indicate that any of the individuals who made reports to the compliance program office, participated in investigations conducted under the compliance program, or were alleged to have committed the activities that are the subject of the complaints have consented to release of their information. *See id.* § 51.971(d).

You seek to withhold the information you have marked in its entirety under section 51.971(e). This section requires (1) there be an ongoing compliance program investigation, and (2) release of the records at issue would interfere with such investigation. *Id.* § 51.971(e). You inform this office the information you have marked pertains to an unresolved compliance investigation that is ongoing by the university. You assert release of this information at this time will interfere with this investigation. Accordingly, we conclude the university must withhold the remaining information at issue in its entirety under section 552.101 of the Government Code in conjunction with section 51.971(e) of the Education Code. As this ruling is dispositive, we need not address your remaining arguments against disclosure.

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.oag.state.tx.us/open/index_orl.php, 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 must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read "Ryan T. Mitchell". The signature is fluid and cursive, with the first name "Ryan" being more prominent than the last name "Mitchell".

Ryan T. Mitchell
Assistant Attorney General
Open Records Division

RTM/dls

Ref: ID# 363114

Enc. Submitted documents

c: Requestor
(w/o enclosures)