



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 16, 2009

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

OR2009-17817

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# 362901.

The University of Texas Medical Branch at Galveston (the "university") received a request for six categories of information pertaining to a named individual. You state that you are handling the release of some of the information. You also state that you will withhold certain personal information of government employees pursuant to section 552.024(c)(2) of the Government Code. *See* Gov't Code § 552.024(c) (permitting governmental bodies to redact certain personal information pertaining to employees who properly elected to keep their information confidential, without the necessity of requesting a decision from this office). You claim that 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 representative sample of information.<sup>1</sup>

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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 No. 499 (1998), 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.

the information is protected health information. Subsection 181.006(2) does not remove protected health information from the Act's application, but rather states this information is "not public information and is not subject to disclosure under [the Act]." We interpret this to mean a covered entity's protected health information is subject to the Act's application. Furthermore, this statute, when demonstrated to be applicable, makes confidential the information it covers. Thus, we will consider your arguments for this information, as well as for the remaining information.

You claim the submitted information should be withheld under section 552.101 of the Government Code in conjunction with section 51.971 of the Education Code. Section 51.971 provides:

(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 institution of higher education, sought guidance from the office, or participated in an investigation conducted under the compliance program; and

...

(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 submitted information pertains to a completed compliance program investigation and that it relates to the university's internal process of review to assess and ultimately ensure that its employees complied with all applicable laws, rules, regulations, and policies in regards to the actions of a named individual. Thus, we agree the submitted information pertains to the university's compliance program for purposes of section 51.971. *See* Educ. Code § 51.971(a). You also state that none of the individuals involved in these reports as complainants or participants have consented to released of their information. *See id.* § 51.971(d).

You claim the submitted information is confidential under subsection 51.971(c)(1), which 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). The submitted information contains the names of certain complainants and participants in the investigation at issue. Accordingly, we marked the identifying information the university must withhold under section 552.101 in conjunction with section 51.971(c). However, you have failed to demonstrate how the remaining information identifies a complainant or participant for purposes of section 51.971(c). Consequently, you have failed to show the remaining information is confidential under section 51.971(c), and it may not be withheld on that basis.

We note that section 552.101 encompasses the doctrine of common-law privacy, which protects information that (1) contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The types of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. This office has found that some kinds of medical information or information indicating disabilities or specific illnesses are excepted from required public disclosure under common-law privacy. *See* Open Records Decision No. 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). Upon review, we find portions of the remaining information to be intimate or embarrassing and of no legitimate public interest. Accordingly, the university must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.<sup>2</sup>

In summary, the university must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 51.971 of the Education Code. The university must withhold the information we have marked under

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

section 552.101 in conjunction with common-law privacy. 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.oag.state.tx.us/open/index\\_orl.php](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,



James McGuire  
Assistant Attorney General  
Open Records Division

JM/jb

Ref: ID# 362901

Enc. Submitted documents

c: Requestor  
(w/o enclosures)