



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 2, 2011

Ms. Zeena Angadicheril
Office of General Counsel
The University of Texas System
201 West Seventh Street
Austin, Texas 78701

OR2011-17750

Dear Ms. Angadicheril:

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# 437738 (OGC# 139701).

The University of Texas Medical Branch at Galveston (the "university") received a request for records pertaining to an investigation involving the requestor, including the accusations made against the requestor and the names of the individuals who made the accusations. You claim some of the submitted information is not subject to the Act. You also claim the submitted information is excepted from disclosure under sections 552.101, 552.137, and 552.152 of the Government Code. We have considered your arguments and reviewed the submitted information.

Initially, you argue that, pursuant to section 181.006 of the Health and Safety Code, the information you have marked is not subject to the Act. Section 181.006 states "[f]or a covered entity that is a governmental unit, an individual's protected health information . . . is not public information and is not subject to disclosure under [the Act]." Health & Safety Code § 181.006(2). We will assume, without deciding, the university is a covered entity. Section 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 the remaining 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. Section 552.101 encompasses information made confidential by other statutes, such as section 51.971 of the Education Code, which provides, in relevant 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 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 submitted information pertains to a completed investigation concerning ethical questions and standards of conduct of the requestor that was undertaken by the university’s Office of Human Resources. You state the investigation was

in response to employee complaints against the requestor and was initiated in order to assess and ensure compliance with all applicable laws, rules, regulations, and policies. We agree the submitted information relates to an investigation conducted under the university's compliance program. *See id.* § 51.971(a). You explain the individuals who participated in, and provided information for, the investigation worked with the requestor in the same department, often on the same shift as the requestor, and the requestor has knowledge of the events at issue and each individual's involvement in those events. Further, you provide a statement from an individual who conducted the investigation who explains that releasing the submitted information would directly or indirectly reveal the identity of those individuals who participated in the investigation or provided information because the requestor knows each person's involvement in the events at issue. You state none of the individuals who made the complaint and/or participated in the investigation have consented to the disclosure of their identifying information. Based on these representations and our review, we agree release of the submitted information would directly or indirectly reveal the identities of the individuals who participated in the investigation. Accordingly, the submitted information is confidential under section 51.971 of the Education Code and the university must withhold it under section 552.101 of the Government Code.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.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,



Leah B. Wingerson
Assistant Attorney General
Open Records Division

LBW/dls

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

Ref: ID# 437738

Enc. Submitted documents

c: Requestor
(w/o enclosures)