



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 25, 2012

Ms. Carol A. Longoria
Office of General Counsel
The University of Texas System
201 West Seventh Street
Austin, Texas 78701-2902

OR2012-17111

Dear Ms. Longoria:

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# 468983 (UT OGC# 145408).

The University of Texas Health Science Center at Houston (the "university") received a request for the investigation file and documents and communications related to the investigation of the three requestors' gender discrimination complaint. 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 representative sample of information.¹

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Section 51.971 of the Education Code provides in relevant part the following:

¹We 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.

(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 inform us 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 consists of a completed compliance investigation conducted by the university's Office of Human Resources Equal Opportunity. You further state the investigation was initiated in response to allegations of gender discrimination against a

university employee in order to assess and ensure compliance with all applicable laws, rules, regulations, and policies. Based on your representations, we find this information relates to an investigation conducted under the university's compliance program. *See id.* § 51.971(a)(1).

You seek to withhold the submitted information in its entirety. You state the submitted information relates to a closed compliance matter which resulted in a final determination that the allegations were unsubstantiated. You explain, and have provided a statement from the investigator, that only a small subset of individuals were involved in the investigation. You further explain that the requestors were parties to the alleged incidents and have specific knowledge of the alleged incidents. Accordingly, you assert release of any of the submitted information would directly or indirectly identify the individuals making the report to, seeking guidance from, or participating in the compliance program investigation. You state none of the relevant individuals have consented to the disclosure of their identifying information.

Upon review, we agree release of most of the documents at issue would directly or indirectly identify individuals as complainants or as participants in the compliance program investigation, or an individual who was alleged to have participated in the activities subject to the complaint. *See id.* § 51.971(c). However, we note the requestors are some of the individuals whose information is subject to section 51.971(c). Thus, pursuant to section 51.971(d), we find the requestors have a right of access to information pertaining solely to themselves, and such information, which we have marked for release, may not be withheld from the requestors under section 51.971(c). *Cf.* Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). Additionally, we find a portion of the submitted information does not identify an individual who made a report to, sought guidance from, or participated in a compliance program investigation, or an individual who was alleged to have participated in the activities subject to the complaint for the purposes of section 51.971(c). Consequently, you have failed to show how this information is confidential under section 51.971 of the Education Code, and the university may not withhold this information, which we have marked for release, under section 552.101 on that basis. Therefore, with the exception of the information we have marked for release, the university must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 51.971 of the Education Code.

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 cursive script, appearing to read "Kristi L. Wilkins".

Kristi L. Wilkins
Assistant Attorney General
Open Records Division

KLW/ag

Ref: ID# 468983

Enc. Submitted documents

c: Requestor
(w/o enclosures)