



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 15, 2012

Ms. Melissa V. Garcia
Office of General Counsel
The University of Texas System
201 West Seventh Street
Austin, Texas 78701-2902

OR2012-18436

Dear Ms. Garcia:

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# 471574 (UT OGC Nos. 146197 and 146198).

The University of Texas Medical Branch (the "university") received two requests for information pertaining to complaints filed against the requestors. You claim portions of the submitted information are not public information under the Act. You also claim the submitted information is excepted from disclosure under sections 552.101 and 552.117 of the Government Code. We have considered your arguments and reviewed the submitted representative sample of information.¹

You contend, pursuant to section 181.006 of the Health and Safety Code, portions of the submitted information are 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]." *Id.* 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 the information it encompasses confidential. Thus, we will consider your arguments against disclosure of the submitted information.

¹We assume 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 those records contain substantially different types of information than that submitted to this office.

Section 552.101 of the Government Code exempts 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. 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). 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. You further state the investigation was initiated in response to allegations of religious discrimination, retaliation, hostile work environment, conflicts of interest, and nepotism against university employees in order to assess and ensure compliance with all applicable laws, rules, regulations, and policies. Based

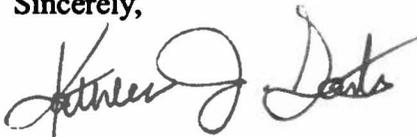
on your representations, we find this information relates to an investigation conducted under the university's compliance program. *See id.* § 51.971(a)(1).

You seek to withhold the submitted information in its entirety. You explain, and have provided a statement from the investigator, that only a small subset of individuals were involved in the investigation. You further explain 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 the compliance office, seeking guidance from the compliance office, 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 documents at issue would directly or indirectly identify individuals as complainants or as participants in the compliance program investigation. *See id.* § 51.971(c)(1). Therefore, the university must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 51.971(c)(1) of the Education Code.²

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,



Kathleen J. Santos
Assistant Attorney General
Open Records Division

KJS/dls

²As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

Ref: ID# 471574

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)