



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 21, 2012

Mr. R. Brooks Moore
Managing Counsel, Governance
The Texas A&M University System
301 Tarrow Street, 6th Floor
College Station, Texas 77840-7896

OR2012-18796

Dear Mr. Moore:

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# 473179 (TAMU 12-478).

Texas A&M University - San Antonio (the "university") received a request for all investigative materials in a specified report and the complete hiring file for the Director of Human Resources position. 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

Initially, we note you have not submitted any information responsive to the request for the complete hiring file for the Director of Human Resources position. We assume that, to the

¹We assume the "representative sample" of information 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 those submitted to this office.

extent any information responsive to this portion of the request existed in the possession of the university when it received the request for information, you have released it to the requestor. *See* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible). If you have not released any such information, you must do so at this time. *See* Gov't Code §§ 552.301(a), .302.

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. Section 552.101 encompasses section 51.971 of the Education Code, which 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

(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 concerns allegations of civil rights violations reported to and investigated by university administrators who are part of the university's compliance program. Upon review, we agree the information at issue relates to an investigation conducted under the university's compliance program. *See id.* § 51.971(a).

You seek to withhold some of the submitted information under section 51.971(c). Section 51.971(c)(1) 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). Section 51.971(c)(2) makes confidential information that identifies individuals alleged to have committed the activities that are the subject of a complaint made to a compliance program office if the office determines the report is unsubstantiated. *Id.* § 51.971(c)(2). However, subsection (c) does not apply to information related to an individual who consents to disclosure of the information. *Id.* § 51.971(d). You state the investigation at issue concluded in a determination the complaint was unsubstantiated or without merit. Upon review, we find portions of the submitted information identify individuals as participants in the compliance program investigations or individuals alleged to have committed the activities that are the subject of the unsubstantiated complaint. We understand these individuals have not consented to release of their information. We note the requestor is the complainant at issue. Thus, pursuant to section 51.971(d), we find the requestor has a right of access to his information and it may not be withheld under section 51.971(c). *Cf.* Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). Based on your representations and our review, we find the university must withhold the information we have marked under section 552.101 in conjunction with section 51.971(c). As you raise no other exceptions against the disclosure of the remaining information, it must be released to the requestor.

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,



Sean Nottingham
Assistant Attorney General
Open Records Division

SN/bhf

Ref: ID# 473179

Enc. Submitted documents

c: Requestor
(w/o enclosures)