



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 30, 2013

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

OR2013-07100

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# 485756 (U.T. OGC # 148753).

The University of Texas at Austin (the "university") received a request for any "disciplinary letters, investigation reports, findings, correspondence[,] and other records [for a specified time period] . . . relating to consensual relationships involving any and all employees of the university" other than athletics department employees, which are maintained by the university's Office of Institutional Equity (the "OIE").¹ You state the university has redacted student-identifiable information pursuant to the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code.² You also state

¹You state the requestor narrowed his request for information. *See* Gov't Code § 552.222(b) (stating that if information requested is unclear to governmental body or if a large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used).

²We note the United States Department of Education Family Policy Compliance Office (the "DOE") has informed this office that FERPA does not permit a state educational agency or institution to disclose to this office, without parental or an adult student's consent, unredacted, personally identifiable information contained in education records for the purpose of our review in the open records ruling process under the Act. *See* 34 C.F.R. § 99.3 (defining "personally identifiable information"). The DOE has determined that FERPA determinations must be made by the educational institution from which the education records were obtained. A copy of the DOE's letter to this office may be found on the Office of the Attorney General's website: <http://www.oag.state.tx.us/open/20060725usdoe.pdf>.

the university will withhold some information subject to section 552.117(a)(1) of the Government Code pursuant to section 552.024 of the Government Code.³ You claim a portion of the submitted information is not subject to the Act and some of the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered your arguments and reviewed the submitted representative sample of information.⁴

Initially, we note you have marked some of the submitted information as not responsive to the request for information. This ruling does not address the public availability of any information that is not responsive to the request, and the university need not release such information in response to this request.

Next, you assert the University of Texas Electronic Identification Number (“UTEID”) contained in the information at issue is not subject to the Act. In Open Records Decision No. 581 (1990), this office determined certain computer information, such as source codes, documentation information, and other computer programming, that has no significance other than its use as a tool for the maintenance, manipulation, or protection of public property is not the kind of information made public under section 552.021 of the Government Code. You inform our office that, when combined with an individual’s password, UTEIDs serve as “the required log on protocol to access the computer mainframe, the [u]niversity’s centralized hub that runs all its high-level electronic functions.” You indicate UTEIDs are used solely to access the university’s computer mainframe and have no other significance other than their use as tools for the maintenance, manipulation, or protection of public information. Based on your representations and our review, we find the UTEID contained in the information at issue does not constitute public information under section 552.002 of the Government Code. Therefore, the submitted UTEID is not subject to the Act and need not be released to the requestor.

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. This section encompasses information protected by other statutes, including section 51.971 of the Education Code. Section 51.971 provides, in relevant part, the following:

³Section 552.024 authorizes a governmental body to redact from public release a current or former employee’s home address and telephone number, emergency contact information, social security number, and family member information excepted from disclosure under section 552.117(a)(1) without the necessity of requesting a decision from this office under the Act, if the employee timely elected to withhold such information. *See* Gov’t Code §§ 552.024(a)-(c), .117(a)(1).

⁴This letter ruling assumes that the submitted representative sample of information is truly representative of the requested information as a whole. This ruling does not reach, and therefore does not authorize, the withholding of any other requested information to the extent that the other information is substantially different than that submitted to this office. *See* Gov’t Code §§ 552.301(e)(1)(D), .302; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

(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.

(e) Information is excepted from disclosure under [the Act] if it is collected or produced:

(1) in a compliance program investigation and releasing the information would interfere with an ongoing compliance investigation[.]

Educ. Code § 51.971(a), (c)-(e)(1). You state 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 pertains to pending and concluded compliance investigations by the OIE. You also state the investigations are being or were conducted in response to allegations concerning university employees and were initiated in order to assess and ensure compliance with all applicable laws, rules, regulations, and policies. Based on your representations, we find the submitted information relates to investigations conducted under the university's compliance program. *See id.* § 51.971(a)(1).

You inform this office some of the responsive information pertains to ongoing compliance investigations by the OIE. You also represent release of this information at this time would interfere with, and potentially compromise, these investigations. Accordingly, we conclude the university must withhold the information you have marked pertaining to the pending investigations under section 552.101 in conjunction with section 51.971(e)(1) of the Education Code.⁵

You inform us some of the remaining responsive information consists of completed compliance investigations that concluded in determinations that the complaints were unsubstantiated or without merit. You assert the information you have marked pertaining to these concluded investigations is information that would directly or indirectly reveal the identities of those individuals who made the complaint, sought guidance from the compliance program office, participated in the investigation, or are alleged to have or may have planned, initiated, or participated in activities that are the subject of the complaint. *See id.* § 51.971(c)(1), (2). Additionally, you inform us the remaining responsive information consists of completed compliance investigations that concluded in determinations that the complaints were substantiated. You assert the information you have marked in these concluded investigations is information that would directly or indirectly reveal the identities of those individuals who made the complaint, sought guidance from the compliance program office, or participated in the investigation. *See id.* § 51.971(c)(1). You inform us none of these individuals have consented to release of their information. Upon review, we conclude the university must withhold most of the information you have marked under section 552.101 in conjunction with section 51.971(c) of the Education Code.⁶ However, some of the information you have marked is either not information that would directly or indirectly reveal the identities of the individuals at issue or it does not pertain to individuals who made the complaint, sought guidance from the compliance program office, or participated in the investigation, or individuals who were alleged to have or may have planned, initiated, or participated in activities that are the subject of a complaint that was determined to be unsubstantiated or without merit. Consequently, we find you have failed to show how this

⁵As our ruling is dispositive, we need not address your remaining arguments against disclosure of this ongoing investigation.

⁶As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

information, which we have marked for release, is confidential under section 51.971, and it may not be withheld under section 552.101 on that basis.

You assert some of the remaining responsive information is protected under the common-law and constitutional rights to privacy, which are also encompassed by section 552.101 of the Government Code. Common-law privacy protects information that is highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and of no legitimate public interest. See *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Common-law privacy encompasses the specific types of information held to be intimate or embarrassing in *Industrial Foundation*. See 540 S.W.2d at 683 (information relating to sexual assault, pregnancy, mental or physical abuse in workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs). This office has determined other types of information are private under section 552.101. See generally Open Records Decision No. 659 at 4-5 (1999) (summarizing information attorney general has held to be private). However, this office has noted the public has a legitimate interest in information that relates to public employees and their conduct in the workplace. See, e.g., Open Records Decision Nos. 562 at 10 (1990), 470 at 4 (1987) (job performance does not generally constitute public employee's private affairs), 444 at 3 (1986) (public has obvious interest in information concerning qualifications and performance of government employees), 405 at 2 (1983) (manner in which public employee's job was performed cannot be said to be of minimal public interest), 329 (1982).

Constitutional privacy protects two kinds of interests. See *Whalen v. Roe*, 429 U.S. 589, 599-600 (1977); Open Records Decision Nos. 600 at 3-5 (1992), 478 at 4 (1987), 455 at 3-7 (1987). The first is the interest in independence in making certain important decisions relating to the "zones of privacy" pertaining to marriage, procreation, contraception, family relationships, and child rearing and education the United States Supreme Court has recognized. See *Fadjo v. Coon*, 633 F.2d 1172 (5th Cir. 1981); ORD 455 at 3-7. The second constitutionally protected privacy interest is in freedom from public disclosure of certain personal matters. See *Ramie v. City of Hedwig Village, Tex.*, 765 F.2d 490 (5th Cir. 1985); ORD 455 at 6-7. This aspect of constitutional privacy balances the individual's privacy interest against the public's interest in the information. See ORD 455 at 7. Constitutional privacy under section 552.101 is reserved for "the most intimate aspects of human affairs" and the scope of information protected is narrower than that under the common-law doctrine of privacy. *Id.* at 5 (internal quotations omitted) (quoting *Ramie*, 765 F.2d at 492).

Upon our review, we find you have not demonstrated any of the remaining responsive information at issue pertains to an identified individual and is highly intimate or embarrassing and not of legitimate public interest. We also find you have failed to demonstrate the responsive information at issue falls within the zones of privacy or otherwise implicates an identified individual's privacy interests for the purposes of constitutional privacy. We therefore conclude the university may not withhold any of the remaining

responsive information under section 552.101 in conjunction with either common-law or constitutional privacy.

In summary, the submitted UTEID is not subject to the Act and the university need not release it to the requestor. With the exception of the information we have marked for release, the university must withhold the responsive information you have marked under section 552.101 of the Government Code in conjunction with section 51.971 of the Education Code. The university must release the remaining responsive information.

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,



Lindsay E. Hale
Assistant Attorney General
Open Records Division

LEH/tch

Ref: ID# 485756

Enc. Submitted documents

c: Requestor
(w/o enclosures)