



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 7, 2013

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

OR2013-07527

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# 486768 (OGC#'s 148471 and 148766).

The University of Texas at San Antonio (the "university") received two requests for information.<sup>1</sup> The first requestor seeks 1) audits regarding a named individual during a specified time period, 2) letters or documents of resignation of the named individual, 3) university contracts with three named companies during a specified time period, 4) university contracts with four named individuals or their companies during a specified time period, and 5) communications between employees of the university's Office of Facilities and four named individuals during a specified time period. The second requestor seeks 1) any documents pertaining to a named individual's resignation or termination, 2) any communications during a specified time period between the university and law enforcement entities concerning six named individuals, and 3) names, mailing addresses, and e-mail addresses of all individuals involved in a specified investigation. You state the university does not have information responsive to the first and second categories of the first request.<sup>2</sup> You claim the submitted information is excepted from disclosure under sections 552.101, 552.103, 552.107, 552.108, 552.117, and 552.137 of the Government

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<sup>1</sup>We note we have combined these requests, which originally were assigned by our office identification numbers 486768 and 487124, under identification number 486768.

<sup>2</sup>The Act does not require a governmental body to release information that did not exist when it received a request or to create responsive information. See *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App. – San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

Code.<sup>3</sup> We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>4</sup>

Initially, we note the submitted information includes signed purchase orders. Section 552.022(a)(3) of the Government Code provides “information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body” is subject to required public disclosure unless it is made confidential under this chapter or “other law.” Gov’t Code § 552.022(a)(3). Although you raise sections 552.103 and 552.108 for this information, these are discretionary exceptions and do not make information confidential under the Act. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). Accordingly, none of the information subject to section 552.022 may be withheld under either section 552.103 or section 552.108. However, because section 552.101 can make information confidential under the Act, we will address your arguments under that section for the purchase orders, as well as the remaining information. We will also consider your arguments under sections 552.103, 552.107, 552.108, 552.117, and 552.137 for the information not subject to section 552.022.

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 exception encompasses information other statutes make confidential, such as section 51.971 of the Education Code, which provides, in part:

(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(e)(1). Section 51.971 defines a compliance program as “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[.]” *Id.* § 51.971(a)(1). We note 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 assert the submitted information pertains to

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<sup>3</sup>Although you do not raise sections 552.117 and 552.137 of the Government Code in your brief, we understand you to raise these exceptions based on your markings in the submitted information.

<sup>4</sup>We 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.

an investigation into allegations of employee misconduct related to the university's contract procurement process. You state the investigation is being conducted by the university's Audit, Compliance, and Risk Services Office. You further state the purpose of the review is to assess and ultimately ensure that the university's employees complied with all applicable law, rules, regulations, and policies. Based on your representations and our review, we agree the submitted information pertains to the university's compliance program for purposes of section 51.971. *See id.* § 51.971(a). You inform this office the submitted information pertains to an ongoing compliance investigation and release of the information at this time would interfere with, and potentially compromise, that investigation. Accordingly, we conclude the university must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 51.971(e)(1) of the Education Code.<sup>5</sup>

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](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,



Kristi L. Wilkins  
Assistant Attorney General  
Open Records Division

KLW/bhf

Ref: ID# 486768

Enc. Submitted documents

c: 2 Requestors  
(w/o enclosures)

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<sup>5</sup>As our ruling is dispositive, we need not address your remaining arguments against its release.