



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 15, 2013

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

OR2013-08067

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# 487542 (OGC No. 148841).

The University of Texas at San Antonio (the "university") received a request for information related to job requisition number 20120380, including information from the investigation of the appointment of the requestor to the position, e-mails between the requestor and three named individuals regarding his appointment, and the grievance filed by another named individual. You state you have released some of the responsive information to the requestor. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code and privileged under Texas Rule of Evidence 503. We have considered the exception you claim and reviewed the submitted representative sample of information.<sup>1</sup>

Initially, you acknowledge, and we agree, the university failed to comply with section 552.301 of the Government Code in seeking an open records decision from this

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<sup>1</sup>This letter ruling assumes 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).

office. *See* Gov't Code § 552.301(b). A governmental body's failure to comply with the procedural requirements of the Act results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 319 (1982). The presumption that information is public under section 552.302 can be overcome by demonstrating that the information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). You assert a portion of the submitted information is privileged under rule 503 of the Texas Rules of Evidence. However, this rule is discretionary in nature and may be waived, and, thus, does not provide a compelling reason to withhold information under section 552.302. *See* Gov't Code § 552.007; Open Records Decision Nos. 676 at 10-11 (2002) (attorney-client privilege under Texas Rule of Evidence 503 constitutes compelling reason to withhold information under section 552.302 only if information's release would harm third party), 665 at 2 n.5 (2000), 663 at 5 (1999). Accordingly, the university may not withhold any of the information at issue under rule 503 of the Texas Rules of Evidence. However, because section 552.101 of the Government Code can provide a compelling reason to withhold information, we will consider the applicability of this exception to the submitted information.

We understand you have redacted information pertaining to the requestor under section 552.117(a)(1) of the Government Code as permitted by section 552.024 of the Government Code and section 552.137 of the Government Code pursuant to Open Records Letter No. 684 (2009).<sup>2</sup> However, section 552.117 protects personal privacy and, thus, the requestor has a right of access under section 552.023 of the Government Code to his private information. *See* Gov't Code § 552.023(a) (person has special right of access, beyond the right of general public, to information held by a governmental body that relates to person and is protected from public disclosure by laws intended to protect person's privacy interests); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). In addition, the requestor has a right of access pursuant to section 552.137(b) of the Government Code to his own e-mail address. *See*

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<sup>2</sup>Section 552.024(c) of the Government Code authorizes a governmental body to redact, without the necessity of requesting a decision from this office, the home address, home telephone number, social security number, and family member information of a current or former employee who properly elected to keep this information confidential. *See* Gov't Code § 552.024(c); *see id.* § 552.024(c-1) (requestor may appeal governmental body's decision to withhold information under section 552.024(c) to attorney general), .024(c-2) (governmental body withholding information pursuant to section 552.024(c) must provide certain notice to requestor). Open Records Decision No. 684 (2009) is a previous determination issued by this office authorizing all governmental bodies to withhold certain categories of information without the necessity of requesting an attorney general decision including an e-mail address of a member of the public under section 552.137 of the Government Code.

Gov't Code § 552.137(b). Accordingly, the university may not withhold the information pertaining to the requestor it has marked under section 552.117 or 552.137 of the Government Code. Further, you have redacted additional information which you do not assert, nor does our review of the records indicate, you have been authorized to withhold without seeking a ruling from this office. Pursuant to section 552.301 of the Government Code, a governmental body that seeks to withhold requested information must request a ruling from this office, unless the governmental body is statutorily authorized to withhold the information without asking for a ruling or the information is subject to a previous determination issued by this office. *Id.* § 552.301(a), (e)(1)(D). Therefore, information must be submitted in a manner that enables this office to determine whether the information comes within the scope of an exception to disclosure. In this instance, we can discern the nature of the redacted information; thus, we will address whether that information must be released under the Act.

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, 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.

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(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 university is an institution of higher education for purposes of section 61.003 of the Education Code. *See id.* § 51.971(a)(2). You inform us the submitted information pertains to a completed investigation undertaken by the university's Human Resources Employee Relations Department. You state the investigation was in response to a grievance filed with university's Institutional Compliance Office regarding the hiring process for a position to which the requestor applied. You further state the complaint implicates the ethics and standards of conduct of university employees and the investigation was initiated in order to assess and ensure compliance with all applicable laws, rules, regulations, and policies. Upon review, we agree the submitted information relates to an investigation conducted under the university's compliance program. *See id.* § 51.971(a).

You contend releasing the submitted information would directly or indirectly reveal the identity of those individuals making a report to, seeking guidance from, or participating in a compliance program investigation. You explain the requestor has knowledge of the investigation at issue and the individuals involved in the investigation, including the identity of the complainant and participants named in his request. Further, you provide a statement from a supervisor who explains that releasing the submitted information would directly or indirectly reveal the identities of those individuals who participated in the investigation or provided information because the requestor is an employee in the department involved in the investigation, has knowledge of the investigation, and is familiar with the individuals and circumstances surrounding the investigation. You state none of the individuals who made the complaint or participated in the investigation have consented to the disclosure of their identifying information. *See id.* § 51.971(d). Based on these representations and our review, we agree portions of the information at issue would directly or indirectly reveal the identity of the individuals who participated in the investigation or provided information. Accordingly, we find the university must withhold the identifying information we have marked under section 552.101 in conjunction with section 51.971(c)(1) of the Education Code. However, because the report was substantiated, the identifying information of the individuals alleged to have committed the activities that are the subject of the complaint is

not confidential under section 51.971. *See id.* § 51.971(c)(2). Further, you have failed to demonstrate how the remaining information identifies an individual who made a report to, sought guidance from, or participated in a compliance program investigation for purposes of section 51.971(c)(1). Consequently, you have failed to show any of the remaining information is confidential under section 51.971(c) of the Education Code, and it may not be withheld under section 552.101 of the Government Code on that basis.

Some of the remaining information may be protected from public disclosure by section 552.117 of the Government Code.<sup>3</sup> Section 552.117(a)(1) excepts from disclosure the current and former home addresses and telephone numbers, emergency contact information, social security numbers, and family member information of current or former employees of a governmental body who request that this information be kept confidential under section 552.024 of the Government Code. Gov't Code § 552.117(a)(1). Section 552.117(a)(1) also applies to the personal cellular telephone number of a current or former official or employee of a governmental body, provided the cellular telephone service is not paid by a governmental body. *See* Open Records Decision No. 506 at 5-6 (1988). Whether a particular piece of information is protected by section 552.117(a)(1) must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Therefore, a governmental body must withhold information under section 552.117(a)(1) on behalf of a current or former employee only if the individual made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. Accordingly, if the individuals whose cellular telephone numbers we have marked timely requested confidentiality under section 552.024, the university must withhold their information under section 552.117(a)(1) of the Government Code if the cellular service is not paid for by a governmental body. If the individuals at issue did not make timely elections under section 552.024 or if the cellular service was paid for by a governmental body, the university may not withhold the information we have marked under section 552.117(a)(1) of the Government Code.

In summary, the university must withhold the identifying information we have marked under section 552.101 of the Government Code in conjunction with section 51.971(c)(1) of the Education Code. If the individuals whose cellular telephone numbers we have marked timely requested confidentiality under section 552.024, the university must withhold their information under section 552.117(a)(1) of the Government Code if the cellular service is not paid for by a governmental body. The remaining information must be released.

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.

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<sup>3</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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,

A handwritten signature in black ink, appearing to read "Michelle R. Garza", with a long horizontal line extending to the right.

Michelle R. Garza  
Assistant Attorney General  
Open Records Division

MRG/som

Ref: ID# 487542

Enc. Submitted documents

c: Requestor  
(w/o enclosures)