



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 26, 2013

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

OR2013-14908

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# 497695.

Texas A&M University-Kingsville (the "university") received a request for the investigation report of a complaint made by the requestor, the response of the second reviewer to that investigative report, e-mail correspondence between two named individuals from May 2010 to the date of the request, and a specified complaint and compliance report generated by the university's police department (the "department"). You state you will provide the requested e-mails and complaint and compliance report generated by the department to the requestor. You claim the remaining requested 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 the United States Department of Education Family Policy Compliance Office has informed this office that the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232g, does not permit state and local educational authorities to disclose to this office, without parental consent, unredacted, personally identifiable information contained in education records for the purpose of our review in the open records

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

ruling process under the Act.² Consequently, state and local educational authorities that receive a request for education records from a member of the public under the Act must not submit education records to this office in unredacted form, that is, in a form in which “personally identifiable information” is disclosed. *See* 34 C.F.R. § 99.3 (defining “personally identifiable information”). You have submitted redacted and unredacted education records for our review. Because our office is prohibited from reviewing these education records to determine whether appropriate redactions under FERPA have been made, we will not address the applicability of FERPA to any of the submitted records. *See* 20 U.S.C. § 1232g(a)(1)(A). Such determinations under FERPA must be made by the educational authority in possession of such records.³ However, we will consider your arguments against disclosure of the submitted information.

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.

...

²A copy of this letter may be found on the Office of the Attorney General’s website: <http://www.oag.state.tx.us/open/20060725usdoe.pdf>.

³In the future, if the university does obtain parental or an adult student’s consent to submit unredacted education records and the university seeks a ruling from this office on the proper redaction of those education records in compliance with FERPA, we will rule accordingly.

(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). We understand 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 investigation at issue was conducted in response to allegations of policy and standard of conduct violations against university employees and was undertaken by university administrators who are part of the university's compliance program. You further state the compliance investigation is completed, and concluded in a determination the complaint was unsubstantiated or without merit. Based on your representations, we find the information at issue relates to an investigation conducted under the university's compliance program. *See id.* § 51.971(a)(1).

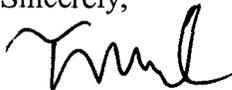
You state releasing the information you have marked would directly or indirectly reveal the identity of those individuals participating in a compliance program investigation or alleged to have participated in the activities subject to the complaint. Subsection (c) does not apply to information related to an individual who consents to disclosure of the information. *Id.* § 51.971(d). We understand none of the individuals at issue have consented to release of their information. Upon review, we agree release of some of the information you have marked, and additional information we have marked for withholding, would directly or indirectly identify individuals as participants in the compliance program investigation, or as alleged participants in the activities subject to the complaint. *See id.* § 51.971(c). Thus, the university must withhold this information under section 552.101 in conjunction with section 51.971(c). However, none of the remaining information you seek to withhold, which we have marked for release, identifies an individual who made a report, sought guidance from, or participated in a compliance program investigation, or was alleged to have or may have planned, initiated, or participated in the activities subject to the complaint for purposes of section 51.971 of the Education Code. Consequently, you have failed to show how any

of the remaining information is confidential under section 51.971, and it may not be withheld under section 552.101 on that basis. Accordingly, with the exception of the information we have marked for release, the university must withhold the information it has marked and the information we 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 information.⁴

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Tim Neal
Assistant Attorney General
Open Records Division

TN/dls

Ref: ID# 497695

Enc. Submitted documents

Ref: ID# 497695

c: Requestor
(w/o enclosures)

⁴We note the requestor has a special right of access to some of the information being released under section 51.971(d) of the Education Code. *See* Educ. Code § 51.971(d). Therefore, if the university receives another request for this particular information from a different requestor, the university should again seek a decision from this office.