



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 5, 2013

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

OR2013-15527

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# 498567.

Texas A&M University-San Antonio (the "university") received a request for two specified investigation files. 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 information.

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 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.

...

(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:

...

(2) by a systemwide compliance office for the purpose of reviewing compliance processes at a component institution of higher education of a university system.

Educ. Code § 51.971(a), (c)-(d), (e)(2). You state the information in Exhibit B concerns an allegation of a breach of standards of conduct and ethics. In response to the allegation, you state the System Internal Audit Department (the "department") initiated an internal review to assess and ensure employees' compliance with applicable laws, rules, regulations, and policies. You explain the department collected and produced the information at issue for the purpose of reviewing compliance processes at the university, a component of the Texas

A&M University System. Based on your representations and our review, we conclude the university must withhold Exhibit B under section 552.101 of the Government Code in conjunction with section 51.971(e)(2) of the Education Code.

You claim portions of the information in Exhibit B-1 are subject to section 51.971(c)(1). We note the information in Exhibit B-1 consists of a completed compliance investigation, which concluded in a determination that some of the complaints were substantiated, but the remaining complaints were unsubstantiated or without merit. You assert the information you have marked pertaining to the concluded investigation 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. Pursuant to section 51.97(c)(2), the identifying information of the individual alleged to have committed the activities that are the subject of the unsubstantiated complaints is generally confidential. *See id.* § 51.971(c)(2). However, in this instance, the requestor is the subject of the unsubstantiated complaints. Therefore, 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)(2). *Cf.* Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). Upon review, we find the university must withhold the information we have marked in Exhibit B-1 under section 552.101 in conjunction with section 51.971(c)(1) of the Education Code. However, you have failed to demonstrate how the remaining information identifies an individual who made a complaint, sought guidance from the compliance program office, or participated in the investigation for purposes of section 51.971(c)(1). Accordingly, no portion of the remaining information may be withheld under section 552.101 of the Government Code in conjunction with section 51.971(c)(1) of the Education Code.

We note the remaining information in Exhibit B-1 contains an e-mail address subject to section 552.137 of the Government Code.¹ Section 552.137 excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See Gov’t Code* § 552.137(a)-(c). The e-mail address at issue is not excluded by subsection (c). Therefore, the university must withhold the personal e-mail address we have marked under section 552.137 of the Government Code, unless the owner affirmatively consents to its public disclosure.²

¹The 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, 480 (1987), 470 (1987).

²We note Open Records Decision No. 684 (2009) is a previous determination to all governmental bodies authorizing them to withhold certain categories of information, including an e-mail address of a member of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

In summary, the university must withhold Exhibit B and the information we have marked in Exhibit B-1 under section 552.101 of the Government Code in conjunction with section 57.971 of the Education Code. The university must withhold the e-mail address we have marked under section 552.137 of the Government Code, unless the owner consents to its public disclosure. The university must release the remaining information.³

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,



Cynthia G. Tynan
Assistant Attorney General
Open Records Division

CGT/akg

Ref: ID# 498567

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³Because the requestor has a special right of access to some of the information being released, the university should again seek a decision from this office if it receives another request for this particular information from a different requestor.