



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 13, 2013

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

OR2013-19788

Dear Ms. Vieira:

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# 505518 (OGC# 151669).

The University of Texas Medical Branch at Galveston (the "university") received a request for information concerning investigations, complaints, and documents from a specified time period involving a named individual. You state the university does not maintain some of the requested information.¹ You also state the university is releasing some of the requested information. You claim portions of the requested information are not public information under the Act. You also claim the information is excepted from disclosure under section 552.101 of the Government Code and privileged under rule 503 of the Texas Rules of Evidence. We have considered your arguments and reviewed the submitted representative sample of information.²

¹The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

²We 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.

You contend that, pursuant to section 181.006 of the Health and Safety Code, the information you have marked is not subject to the Act. Section 181.006 states “for a covered entity that is a governmental unit, an individual’s protected health information . . . is not public information and is not subject to disclosure under [the Act].” Health & Safety Code § 181.006(2). We will assume, without deciding, the university is a covered entity. Section 181.006(2) does not remove protected health information from the Act’s application, but rather states this information is “not public information and is not subject to disclosure under [the Act].” *Id.* We interpret this to mean a covered entity’s protected health information is subject to the Act’s application. Furthermore, this statute, when demonstrated to be applicable, makes the information it encompasses confidential. Thus, we will consider your arguments against disclosure of the information at issue.

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:

(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 inform us 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 investigations were undertaken by the university's internal review process. You state the investigations were conducted in response to allegations against 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 the submitted information regarding the investigation of a complaint made to the university's Fraud and Abuse Hotline pertains to an ongoing compliance investigation by the university. You also represent release of this information at this time would interfere with, and potentially compromise, that investigation. Accordingly, we conclude the university must withhold the information pertaining to the investigation of the complaint to the Fraud and Abuse Hotline, which we have marked, under section 552.101 of the Government Code in conjunction with section 51.971(e)(1) of the Education Code.³

You inform us the remaining information consists of a completed compliance investigation that concluded in a determination that the complaint was unsubstantiated. You state, and provide documentation supporting, that only a small subset of individuals were involved in the investigation. Accordingly, you assert releasing the remaining information would directly or indirectly reveal the identity of those individuals participating in compliance program investigations, or alleged to have participated in the activities subject to the complaints. You inform us none of these individuals have consented to release of their

³As our ruling is dispositive, we need not address your remaining arguments against disclosure of this ongoing investigation.

information. Upon review, we agree release of the information we have marked would directly or indirectly identify individuals as complainants or 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 the information we have marked under section 552.101 of the Government Code in conjunction with section 51.971(c) of the Education Code.⁴ However, we find none of the remaining information identifies an individual making a complaint, seeking guidance from, or participating in a compliance program investigation, or alleged to have 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 of the Education Code, and it may not be withheld under section 552.101 of the Government Code on that basis.

Section 552.101 also encompasses the doctrine of common-law privacy, which protects information if it (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). Upon review, we find the information we have marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the university must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.⁵

In summary, the university must withhold 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 also withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The remaining information must be released.

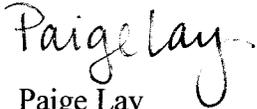
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

⁴As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

⁵As our ruling for this information is dispositive, we need not address your remaining argument against its disclosure.

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,



Paige Lay
Assistant Attorney General
Open Records Division

PL/bhf

Ref: ID# 505518

Enc. Submitted documents

cc: Requestor
(w/o enclosures)