



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 21, 2014

Ms. Cynthia Tynan  
Attorney and Public Information Coordinator  
The University of Texas System  
Office of the General Counsel  
201 West Seventh Street  
Austin, Texas 78701-2902

OR2014-12608

Dear Ms. Tynan:

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# 530443.

The University of Texas Southwestern Medical Center (the "university") received a request for information pertaining to a specified compliance investigation. 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 representative sample of information.<sup>1</sup> We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Section 552.101 of the Government Code excepts from 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 pertinent part:

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<sup>1</sup>We assume 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.

(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.

...

(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 state the submitted information consists of documents collected and/or produced during an ongoing compliance investigation at the university pertaining to ethical questions and standards of conduct of university employees. You further state the university initiated this ongoing compliance investigation in order to assess and ensure its employees complied with all applicable laws, rules, regulations, and policies. You contend release of this information during the pendency of the investigation would interfere with, and potentially compromise, the investigation. We note the requestor challenges the university's assertion the compliance investigation is still ongoing. However, whether the university's compliance investigation is ongoing is a question of fact, and this office cannot resolve disputes of fact in its decisional process. See Open Records Decision Nos. 592 at 2 (1991), 552 at 4 (1990), 435 at 4 (1986). Where a fact issue cannot be resolved as a matter of law, we must rely on the facts alleged to us by the governmental body requesting our opinion, or upon those facts that are discernible from the documents submitted for our inspection. ORD 552 at 4. Accordingly, based on the university's representations and our review, we agree the submitted information is confidential under section 51.971(e)(1) of the Education Code, and, thus, the university must withhold it under section 552.101 of the Government Code.<sup>2</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.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](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,



Lee Seidlits  
Assistant Attorney General  
Open Records Division

CLS/eb

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<sup>2</sup>Although the requestor contends she has a right of access to portions of the submitted information pursuant to section 51.971(d) of the Education Code, subsection (d) only applies to information made confidential by subsection (c). See Educ. Code § 51.971(d).

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Enc. Submitted documents

c: Requestor  
(w/o enclosures)