



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 15, 2014

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

OR2014-14346

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# 533055 (OGC# 156317).

The University of Texas Medical Branch at Galveston (the "university") received a request for the requestor's employee records.¹ You state the university will release some of the responsive information upon payment. You claim portions of the submitted information are excepted from disclosure under sections 552.101 and 552.134 of the Government Code. Additionally, you state, and provide documentation showing, you have notified the Texas Department of Criminal Justice (the "department") of its right to submit comments to this office as to why some of the responsive information should not be released.² *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). We have considered the exceptions you claim and reviewed the submitted information.

You state some of the submitted information was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2012-20623 (2012). In that ruling, we concluded, in part, the university must withhold certain information under section 552.101 of the Government Code in conjunction with common-law privacy. You state the

¹You state, and provide documentation showing, the university asked for and received clarification of the request. *See* Gov't Code § 552.222(b)(providing that if request for information is unclear, governmental body may ask requestor to clarify the request).

²As of the date of this letter, this office has not received comments from the department explaining why the information at issue should not be released.

law, facts, and circumstances on which Open Records Letter No. 2012-20623 was based have not changed. Accordingly, we conclude the university must continue to rely on Open Records Letter No. 2012-20623 as a previous determination and continue to withhold or release any previously ruled upon information in accordance with that ruling.³ *See* Open Records Decision No. 673 (2001) (so long as law, facts, circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

You seek to withhold some of the remaining submitted information under section 552.134 of the Government Code, which excepts from disclosure information relating to inmates of the department. Section 552.134 provides, in relevant part, as follows:

- (a) Except as provided by Subsection (b) or by Section 552.029, information obtained or maintained by the [department] is excepted from the requirements of Section 552.021 if it is information about an inmate who is confined in a facility operated by or under a contract with the department.

Gov't Code § 552.134(a). You state, pursuant to the Correctional Managed Health Care Committee Contract, the university is responsible for furnishing medical and psychiatric care to the department's inmates. You explain the information at issue constitutes communications the department released to the university regarding the termination of a university employee's security access to department facilities. You further explain the information you have marked identifies department inmates. Based on these representations and our review, we find the information at issue consists of information about inmates maintained by the university on behalf of the department. Therefore, the university must withhold the information you have marked under section 552.134 of the Government Code.

You claim some of the remaining submitted information is subject to section 552.101 of the Government Code, which 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

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

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[.]

Educ. Code § 51.971(a), (c)-(d). 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 information you have marked pertains to four completed investigations undertaken by the university's Office of Human Resources and some of the allegations were unsubstantiated. 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 this information relates to investigations conducted under the university's compliance program. *See id.* § 51.971(a)(1).

You seek to withhold two of the investigations in their entirety. You claim, and have provided a statement from the investigator of the allegations at issue stating, only a small subset of individuals were involved in the investigations, and the requestor is familiar with this small group of individuals. This statement further explains that the requestor has specific knowledge of the individuals and allegations involved in the investigations, as she filed the complaints at issue. Accordingly, you assert release of any of the information at issue would directly or indirectly identify the individuals seeking guidance from or participating in the compliance program investigations, as well as the identity of an individual alleged to have planned, initiated, or participated in activities that are the subject of the investigations. You state none of the relevant individuals have consented to the disclosure of their identifying information. Upon review, we agree release of the information at issue would directly or indirectly identify individuals as participants in the compliance program investigations or an individual who was alleged to have participated in the activities subject to the complaints. *See id.* § 51.971(c). Accordingly, the university must withhold the two investigations you have marked in their entirety under section 552.101 of the Government Code in conjunction with section 51.971 of the Education Code.

You also seek to withhold the information you have marked in the remaining two investigations under section 552.101 in conjunction with section 51.971. You claim release of the information at issue would directly or indirectly reveal the identities of those individuals who participated in the investigations. You inform us none of these individuals have consented to release of their information. Upon review, we agree release of most of the information at issue would directly or indirectly identify individuals as complainants or as participants in the compliance program investigations, or an individual who was alleged to have participated in the activities subject to the complaints. *See id.* § 51.971(c). However, we find a portion of the submitted information does not identify an individual who made a report to, sought guidance from, or participated in the compliance program investigations, or an individual who was alleged to have participated in the activities subject to the complaints for the purposes of section 51.971(c). Consequently, you have failed to show how this information is confidential under section 51.971 of the Education Code, and the university may not withhold this information, which we have marked for release, under section 552.101 on that basis. Therefore, with the exception of the information we have marked for release, the university must withhold the information you have marked, as well as the additional information we have marked, in the remaining two investigations under section 552.101 of the Government Code in conjunction with section 51.971 of the Education Code.

In summary, the university must continue to rely on Open Records Letter No. 2012-20623 as a previous determination and continue to withhold or release any previously ruled upon information in accordance with that ruling. The university must withhold the information you have marked under section 552.134 of the Government Code. The university must withhold the two investigations you have marked in their entirety under section 552.101 of the Government Code in conjunction with section 51.971 of the Education Code. With the exception of the information we have marked for release, the university must withhold the information you have marked, as well as the additional information we have marked, in the remaining two investigations 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,



Tamara H. Holland
Assistant Attorney General
Open Records Division

THH/bhf

Ref: ID# 533055

Enc. Submitted documents

c: Requestor
(w/o enclosures)

TDCJ
Executive Services
P.O. Box 99
Huntsville, Texas 77342
(w/o enclosures)

⁴We note that this requestor has a special right of access to some of the information being released. See Educ. Code § 51.971(d); Gov't Code § 552.023(a). Therefore, if the university receives another request for this information from a person who does not have a special right of access to this information, the university should resubmit this same information and request another decision from this office. See *id.* §§ 552.301(a), .302; Open Records Decision No. 673 (2001).