ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 19, 2014

Ms. Cynthia Tynan
Attorney and Public Information Coordinator
The University of Texas System
201 West Seventh Street
Austin, Texas 78701

OR2014-23098

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# 547835 (OGC #158596).

The University of Texas System (the "system") received a request for (1) information pertaining to two specified investigations and (2) documentation on the level of discipline received by officers of the University of Texas at Dallas's (the "university") police department for specified violations for the past ten years. You state you will release some of the requested information to the requestor. You state you have redacted information pursuant to the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232g(a).[1] You also state you will redact information protected by section 552.117(a)(1) of the Government Code pursuant to section 552.024(c)(2) of the Government Code, and

[1]The United States Department of Education Family Policy Compliance Office (the "DOE") has informed this office FERPA does not permit state and local educational authorities to disclose to this office, without parental or an adult student's consent, unredacted, personally identifiable information contained in education records for the purpose of our review in the open records ruling process under the Act. The DOE has determined FERPA determinations must be made by the educational authority in possession of the educational records. We have posted a copy of the letter from the DOE on the Attorney General's website at http://www.oag.state.tx.us/open/20060725usdoe.pdf.

information under section 552.1175 of the Government Code.[2] You claim some of the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.[3]

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. Section 552.101 encompasses information protected by other statutes. Section 51.971 of the Education Code provides, in pertinent 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.

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[2]Section 552.024(c)(2) of the Government Code authorizes a governmental body to redact information protected by section 552.117(a)(1) of the Government Code without the necessity of requesting a decision under the Act if the current or former employee or official to whom the information pertains timely chooses not to allow public access to the information. *See* Gov't Code § 552.024(c)(2). Section 552.1175(f) of the Government Code authorizes a governmental body to redact information under section 552.1175(b), without the necessity of requesting a decision from this office, including the home addresses and telephone numbers, emergency contact information, social security number, date of birth, and family member information of certain individuals who properly elect to keep this information confidential. *See id.* § 552.1175(b), (f). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.1175(h). *See id.* § 552.1175(g), (h).

[3]We 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.

. . .

(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 state the system is an institution of higher education for purposes of section 61.003 of the Education Code. *See id.* § 61.003(8). You assert the submitted information pertains to investigations into allegations of employee misconduct that are closed. You state the compliance investigations were undertaken by individuals within the system's Office of the Director of Police to assess and ultimately ensure the system and university have complied with all applicable law, rules, regulations, and policies. Based on your representations and our review of the information at issue, we find the information at issue relates to investigations conducted under the system's compliance program. *See id.* § 51.971(a)(1).

You seek to withhold portions of the submitted information under section 51.971(c) of the Education Code. You inform us some of the relevant individuals have consented to the disclosure of their identifying information. You seek to withhold the identifying information of the remaining relevant individuals who have not consented to the disclosure of their information in the investigations at issue. You assert release of this information would identify individuals making a report to, seeking guidance from, or participating in the compliance investigations. Upon review, we agree release of the information at issue would identify individuals who made a report to the compliance program office and individuals who participated in the investigation of the complaint. *See id.* § 51.971(c)(1). Accordingly, the system must withhold the information you have marked under section 552.101 of the Government Code in conjunction with section 51.971 of the Education Code.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and (2) 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. In Open Records Decision No. 393 (1983), this office concluded that, generally, only that information which either identifies or tends to identify a victim of sexual assault or other sex-related offense may be withheld under common law privacy; however, because the identifying information was inextricably intertwined with other releasable information, the governmental body was required to withhold the entire report. Open Records Decision No. 393 at 2 (1983); *see* Open Records Decision No. 339 (1982); *see also Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.—El Paso 1992, writ denied) (identity of witnesses to and victims of sexual harassment was highly intimate or embarrassing information and public did not have a legitimate interest in such information); Open Records Decision No. 440 (1986) (detailed descriptions of serious sexual offenses must be withheld). The requestor in this case knows the identity of the alleged victim in report number 12-000367. We believe, in this instance, withholding only identifying information from the requestor would not preserve the victim's common law right to privacy. We conclude, therefore, the system must withhold report number 12-000367 in its entirety pursuant to section 552.101 in conjunction with common-law privacy. However, the remaining reports you seek to withhold in their entireties do not pertain to sexual assaults or sex-related offenses. Therefore, we find the system may not withhold these reports in their entireties. However, we find portions of the remaining reports you have marked meet the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the system must withhold the portions of the remaining reports you have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.108(b)(1) of the Government Code excepts from disclosure the internal records and notations of law enforcement agencies and prosecutors when their release would interfere with law enforcement and crime prevention. Gov't Code § 552.108(b)(1); *see also* Open Records Decision No. 531 at 2 (1989). Section 552.108(b)(1) is intended to protect "information which, if released, would permit private citizens to anticipate weaknesses in a police department, avoid detection, jeopardize officer safety, and generally undermine police efforts to effectuate the laws of this State." *City of Ft. Worth v. Cornyn*, 86 S.W.3d 320, 327 (Tex. App.—Austin 2002, no pet.). To demonstrate the applicability of this exception, a governmental body must meet its burden of explaining how and why release of the requested information would interfere with law enforcement and crime prevention. Open Records Decision No. 562 at 10 (1990). In Open Records Decision No. 506 (1988), this office determined the statutory predecessor to section 552.108(b) excepted from disclosure "cellular mobile phone numbers assigned to county officials and employees with specific law enforcement responsibilities." ORD 506 at 2. We noted the purpose of the cellular

telephones was to ensure immediate access to individuals with specific law enforcement responsibilities and that public access to these numbers could interfere with that purpose. *Id.*

You state the information you have marked consists of a cellular telephone number used by a system officer to carry out his law enforcement responsibilities, and release of this information would interfere with his ability to perform his job duties. Based on your representations and our review of the information at issue, we conclude the system may withhold the information you have marked under section 552.108(b)(1) of the Government Code.

The system has redacted some information pursuant to section 552.130(c) of the Government Code.[4] We note the remaining information contains additional information subject to section 552.130. Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release. *See* Gov't Code § 552.130. Accordingly, the system must withhold the motor vehicle record information you have redacted, as well as the information we have marked, under section 552.130 of the Government Code.

In summary, the system must withhold the information you have marked under section 552.101 of the Government Code in conjunction with section 51.971 of the Education Code. The system must withhold report number 12-000367 in its entirety and the portions of the remaining reports you have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The system may withhold the information you have marked under section 552.108(b)(1) of the Government Code. The system must withhold the motor vehicle record information you have redacted, as well as the information we have marked, under section 552.130 of the Government Code. The system must release the remaining information.

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/

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[4]Section 552.130(c) of the Government Code allows a governmental body to redact the information described in subsection 552.130(a) without the necessity of seeking a decision from the attorney general. *See* Gov't Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e).

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,

Meredith L. Coffman
Assistant Attorney General
Open Records Division

MLC/dls

Ref: ID# 547835

Enc. Submitted documents

c: Requestor
(w/o enclosures)