



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 1, 2016

Ms. Claudene Marshall
Assistant General Counsel
Office of General Counsel
The Texas A&M University System
301 Tarrow Street, 6th Floor
College Station, Texas 77840-7896

OR2016-15034

Dear Ms. Marshall:

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# 617656 (File No. W000707-041416).

Texas A&M University-Corpus Christi (the "university") received a request for a specified final Title IX report. You claim some of the submitted information is excepted from disclosure under section 552.101 of the Government Code.¹ We have considered the raised argument and reviewed the submitted representative sample of information.²

¹We note the university did not comply with the requirements of section 552.301 of the Government Code. *See* Gov't Code § 552.301(b), (e). Nevertheless, section 552.101 of the Government Code is a mandatory exception that can provide a compelling reason to overcome the presumption of openness caused by a failure to comply with section 552.301. *See id.* §§ 552.007, .302. Thus, we will consider the university's claim under this section.

²This letter ruling assumes the submitted representative sample of information is truly representative of the requested information as a whole. This ruling does not reach, and therefore does not authorize the withholding of, any other requested information to the extent that the other information is substantially different than that submitted to this office. *See* Gov't Code §§ 552.301(e)(1)(D), .302; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

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 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.

Educ. Code § 51.971(a), (c)-(d). We understand the university is an institution of higher education for purposes of section 61.003 of the Education Code. *See id.* § 51.971(a)(2). The information in Exhibit B-2 consists of a completed investigation you indicate was initiated in response to allegations of violation of applicable laws and policies. You state the investigation was undertaken by administrators who are part of the university's compliance program. Accordingly, we agree the information at issue pertains to the university's compliance program for the purposes of section 51.971. *See id.* § 51.971(a).

You claim portions of the submitted information are subject to section 51.971(c). Section 51.971(c)(1) makes confidential information that identifies individuals as complainants, as having sought guidance from a compliance program, or as participants in an investigation conducted under a compliance program. *Id.* § 51.971(c)(1). Section 51.971(c)(2) makes confidential information that identifies individuals alleged to have committed the activities that are the subject of a complaint made to a compliance program office if the office determines the report is unsubstantiated. *Id.* § 51.971(c)(2). However, subsection (c) does not apply to information related to an individual who consents to disclosure of the information. *Id.* § 51.971(d). You state the investigation at issue concluded in a determination that certain allegations concerning the subject of the complaint were without merit. Upon review, we agree the information you have marked identifies individuals as participants in the compliance program investigation or as individuals alleged to have committed the activity that is the subject of the unsubstantiated complaint. However, the requestor is the complainant at issue and has a right of access to her information pursuant to section 51.971 (d). *Cf.* Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). Consequently, we find you have failed to show this information, which we have marked for release, is confidential under section 51.971, and the university may not withhold it under section 552.101 on that basis. We conclude, with the exception of the information we have marked for release, the university must withhold the information you have marked under section 552.101 in conjunction with section 51.971(c). As no other exceptions to disclosure have been raised, the remaining information must be released.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/>

³We note the requestor has a right of access to some of the information being released under section 51.971(d) of the Education Code. *See* Educ. Code § 51.971(d). Thus, if the university receives another request for this same information from a different requestor, then it must again seek a ruling from this office.

[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,

Joseph Behnke
Assistant Attorney General
Open Records Division

JB/som

Ref: ID# 617656

Enc. Submitted documents

c: Requestor
(w/o enclosures)