



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

October 5, 2016

Ms. Jennifer Burnett  
Attorney & Public Information Coordinator  
Office of General Counsel  
The University of Texas System  
201 West 7<sup>th</sup> Street, Suite 600  
Austin, Texas 78701-2901

OR2016-22342

Dear Ms. Burnett:

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# 629957 (ORR# 170955).

The University of Texas Medical Branch at Galveston (the "university") received a request for a specified investigation of a named individual. You state the university has released some of the requested information. 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 information.

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 confidentiality provisions such as section 161.032 of the Health and Safety Code, which provides in relevant part:

(c) Records, information, or reports of a . . . compliance officer and records, information, or reports provided by a . . . compliance officer to the governing body of a public hospital, hospital district, or hospital authority are not subject to disclosure under [the Act].

...

(e) The records, information, and reports received or maintained by a compliance officer retain the protection provided by this section only if the records, information, or reports are received, created, or maintained in the exercise of a proper function of the compliance officer as provided by the Office of Inspector General of the United States Department of Health and Human Services.

(f) This section . . . do[es] not apply to records made or maintained in the regular course of business by a hospital, . . . university medical center or health science center, [or] hospital district[.]

Health & Safety Code § 161.032(c), (e), (f). You inform us some of the submitted information, which you have marked, relates to a complaint that was directed to the university's Office of Institutional Compliance ("OIC") and reviewed by the university's compliance officers. You state the OIC initiated an investigation of the complaint pursuant to the university's compliance program. You explain the information at issue was created for and is part of the compliance file for the complaint at issue and is not maintained in the regular course of business. *Cf. Texarkana Mem'l Hosp., Inc. v. Jones*, 551 S.W.2d 33, 35 (Tex. 1977) (defining records made or maintained in regular course of business). Based on your representations and our review, we conclude the information at issue consists of records, information, or reports of a compliance officer acting under subchapter D of chapter 161 of the Health and Safety Code. Therefore, the university must withhold the information you marked under section 552.101 of the Government Code in conjunction with section 161.032 of the Health and Safety Code.

Section 552.101 of the Government Code also encompasses section 51.971 of the Education Code, which provides:

(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.

Educ. Code § 51.971(a), (c)-(d). You state the remaining information pertains to a completed investigation undertaken by the university's Office of Human Resources and the university's Department of Internal Investigations. You further state the investigation was in response to allegations against university employees and was initiated in order to assess and ensure compliance with all applicable laws, rules, regulations, and policies. Upon review, we agree the information at issue relates to an investigation conducted under the university's compliance program. *See id.* § 51.971(a).

You inform us the investigation concluded in a determination the allegations were, for the most part, unsubstantiated for purposes of section 51.971(c)(2). You explain the individuals who made the complaint, participated in the investigation, or were alleged to have participated in the activities subject to the complaint are all part of a small group and, thus, the requestor, who was the one who alleged wrongdoing, has knowledge of the events at issue and each individual's involvement in those events. You state none of the individuals involved have consented to the disclosure of their identifying information. *See id.* § 51.971(d). You assert releasing the information at issue would directly or indirectly reveal the identities of those individuals.

Upon review of your representations and the information at issue, we agree release of the remaining information would directly or indirectly reveal the identities of the individuals who participated in the investigation and the individuals who are alleged to have participated in activities that are the subject of the report. Accordingly, the remaining information is confidential under section 51.971 of the Education Code and must be withheld under section 552.101 of the Government Code.

In summary, the university must withhold the information you marked under section 552.101 of the Government Code in conjunction with section 161.032 of the Health and Safety Code. The university must withhold the remaining information under section 552.101 of the Government Code in conjunction with section 51.971 of the Education Code.

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,

A handwritten signature in black ink, appearing to read "Claire Morris Sloan", with a long horizontal flourish extending to the right.

Claire V. Morris Sloan  
Assistant Attorney General  
Open Records Division

CVMS/som

Ref: ID# 629957

Enc. Submitted documents

c: Requestor  
(w/o enclosures)