



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 7, 2016

Mr. Ronny H. Wall
Associate General Counsel
Texas Tech University System
P.O. Box 42021
Lubbock, Texas 79409-2021

OR2016-22630

Dear Mr. Wall:

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# 629609.

The Texas Tech University System (the "system") received a request for the entire investigation file pertaining to a specified case. You claim the submitted information is excepted from disclosure under sections 552.101, 552.117, and 552.136 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

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, such as section 51.971 of the Education Code, which provides, in relevant part:

(a) In this section:

¹We 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 those records contain substantially different types of information than that submitted to this office.

(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). You inform us Texas Tech University (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 inform us the submitted information relates to an investigation that was undertaken by the university's Office of Equal Employment Opportunity (the "EEO Office"). You state the EEO Office is charged with investigating discrimination claims and other employment related violations of state and federal law. You further state the EEO

Office is part of the system's compliance program. Based on your representations, we find this information relates to an investigation conducted under the system's compliance program. *See id.* § 51.971(a)(1).

You claim the submitted information is 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 information at issue relates to a concluded compliance matter, and the claims to which the information pertains were found to be unsubstantiated. You inform us only a small subset of individuals were involved in the investigation at issue, and release of the information at issue would directly or indirectly reveal the identities of those individuals who participated in the investigation. You inform us none of the individuals have consented to release of their information. Upon review, we agree most of the submitted information 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. Pursuant to section 51.971(d), we find the information pertaining solely to the requestor is not confidential with respect to the requestor and thus, may not be withheld from her under section 552.101 in conjunction with section 51.971(c). Accordingly, with the exception of the information pertaining solely to the requestor, which we have marked, the system must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 51.971(c) of the Education Code.² As you raise no further exceptions to disclosure, 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_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

²As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

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 'Kenny Moreland', written in a cursive style.

Kenny Moreland
Assistant Attorney General
Open Records Division

KJM/akg

Ref: ID# 629609

Enc. Submitted documents

c: Requestor
(w/o enclosures)