OFFICE of the ATTORNEY GENERAL
GREG ABBOTT

June 24, 2003

Mr. Scott A. Kelly
Deputy General Counsel
Texas A & M University System
301 Tarrow, 6th Floor
College Station, Texas 77840-7896

OR2003-4337

Dear Mr. Kelly:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 183211.

Texas A&M University (the "university") received one request for a variety of information referring or relating to the "creation of and/or adherence to any formal/informal policies and/or procedures that may be used and/or referenced by your office in the investigation and/or prosecution of any 'hazing' activities, as prescribed by §37.152 of the Texas Education Code, that may have arisen and/or been reported to your office since January 1, 1999, and continuing to date[.]" You indicate that the university is willing to make some responsive information available to the requestor. You state that portions of the information requested of the university constitute personally identifiable student information contained in student education records which you will withhold from the requestor pursuant to Open Records Decision No. 634 (1995).[1] The Texas A&M University Police Department (the "department") also received a request from the same requestor for the same information.

[1] We note that in Open Records Decision No.634 (1995), this office concluded that (1)an educational agency or institution may withhold information that is protected by the Family Educational Rights and Privacy Act ("FERPA") and excepted from disclosure by sections 552.026 and 552.101 of the Government Code without the necessity of requesting an attorney general decision as to those exceptions, and (2)an educational agency or institution that is state-funded may withhold information that is excepted from disclosure by section 552.114 of the Government Code as a "student record," insofar as the "student record" is protected by FERPA, without the necessity of requesting an attorney general decision as to that exception. Since the university has determined that portions of the information requested of the university constitutes personally identifiable student information contained in student education records, the university must comply with FERPA guidelines in withholding that information from the requestor.

You claim that the requested information that is responsive to this particular request is excepted from disclosure pursuant to section 552.108 of the Government Code. We have considered the exception you claim and have reviewed the submitted representative sample documents.[2]

You claim that the submitted information is excepted from disclosure pursuant to section 552.108(a)(2) of the Government Code. Section 552.108(a)(2) protects records pertaining to criminal investigations or prosecutions that have concluded in a final result other than conviction or a deferred adjudication. *See* Gov't Code § 552.108(a)(2). You state that the submitted information pertains to cases that are "not pending." You further explain that the term "not pending" signifies that the investigation of the matter has been concluded and that none of the investigations resulted in a conviction or deferred adjudication. Accordingly, we agree that section 552.108(a)(2) is applicable to the submitted information.

We note, however, that section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *See* Gov't Code § 552.108(c). We believe such basic information refers to the information held to be public in *Houston Chronicle Publishing Company v. City of Houston,* 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). *See* Open Records Decision No. 127 (1976) (summarizing types of basic information that must be made available to public). Accordingly, with the exception of basic information that must be released to the requestor from throughout all of the submitted information, we conclude that the department may withhold the submitted information pursuant to section 552.108(a)(2) of the Government Code. We note, however, that the department maintains the discretion to release all or part of the information that is not otherwise confidential by law. *See* Gov't Code § 552.007.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days.

---

[2] 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.

Id. § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

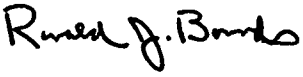
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Ronald J. Bounds
Assistant Attorney General
Open Records Division

RJB/sdk

Ref: ID# 183211

Enc. Submitted documents

cc: Mr. Todd W. Hutton, Esq.
Southwestern Regional Headquarters
Judicial Watch, Inc.
5735 Pineland Drive, Suite 275
Dallas, Texas 75231
(w/o enclosures)