



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 10, 2003

Ms. Carol Longoria
Office of the General Counsel
University of Texas System
201 West Seventh Street
Austin, Texas 78701-2902

OR2003-8077

Dear Ms. Longoria:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 190796.

The University of Texas (the "university") received a request for all information concerning "the investigation, adjudication and punishment of rape and sexual assault at the [university] from 1997 to the present." You claim that the requested information is excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.136 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. You have supplied a letter from the Chief of Police of the university's Police Department in which he states that "none of [the responsive] cases resulted in a conviction or deferred adjudication." Based on this representation and our review of the submitted information, we agree that section 552.108(a)(2) is applicable to the submitted reports.

However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). We believe such basic information refers to the information held to be public in *Houston Chronicle Publishing Co. 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). Front page offense report information includes the identity and description of the complainant. See Open Records Decision No. 127 at 4 (1976) (summarizing types of information made public by *Houston Chronicle*).

However, information tending to identify a sexual assault victim is protected by common law privacy and must be withheld pursuant to section 552.101 of the Government Code.¹ See *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 683-85 (Tex. 1976); Open Records Decision Nos. 393 (1983), 339 (1982). Thus, the university must generally release the types of information that are considered to be front page offense report information, including a detailed description of the offense, regardless of whether such information is actually located on the front page of an offense report. However, we have marked identifying information concerning the victims in report numbers 014248 and 0202355 that must be withheld pursuant to section 552.101 and common law privacy.²

In summary, the university may withhold the submitted reports, other than basic information, pursuant to section 552.108(a)(2). Basic information from each report must generally be released; however, the marked victim-identifying information in report numbers 014248 and 0202355 must be withheld pursuant to section 552.101 and common law privacy. As our ruling on these issues is dispositive, we need not address your remaining arguments.³

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. *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

¹Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision" and encompasses common law privacy.

²We note that the identities of the victims in the other submitted reports are protected from disclosure by the use of pseudonyms.

³We note that basic information as described in *Houston Chronicle* does not include information covered by section 552.130.

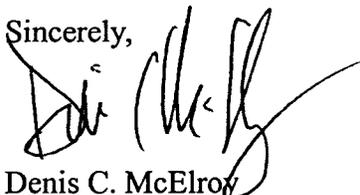
provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to 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,



Denis C. McElroy
Assistant Attorney General
Open Records Division

DCM/lmt

Ref: ID# 190796

Enc. Submitted documents

c: Mr. Wes Ferguson
The Daily Texan
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(w/o enclosures)