



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 8, 2004

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

OR2004-5589

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# 204802.

The University of Texas at El Paso (the "university") received a request for (1) police reports for four specific dates; (2) any communications between a named individual and university police; and (3) information pertaining to a list of individuals who have requested to view, or who have viewed, the requestor's records for a certain period of time. The requestor subsequently submitted a second request seeking (4) a description of a suspect in a particular case; (5) the description given to the university police by a named individual; and (6) university police procedure regarding "the definition of meaningful participation through mail, email, fax, personal visits, and the like." You state that the university has no responsive documents to provide in response to items 2, 3, 5 and 6.¹ Additionally, you state that you will provide the requestor with basic information regarding item 1. See Gov't Code § 552.108(c) (stating basic information about a crime or arrest not excepted from public disclosure under Gov't Code § 552.108); see also *Houston Chronicle Publ'g 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); Open Records Decision No. 127 (1976). You claim, however, that the remaining requested information is excepted from disclosure under

¹ The Public Information Act (the "Act") does not require a governmental body to disclose information that did not exist at the time the request was received. *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986).

sections 552.108 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.²

Section 552.108 of the Government Code provides in relevant part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime; [or]

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that *did not* result in conviction or deferred adjudication[.]

....

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from the requirements of Section 552.021 if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution; [or]

(2) the internal record or notation relates to law enforcement only in relation to an investigation that *did not* result in conviction or deferred adjudication[.]

Gov't Code § 552.108(a)(1), (2) (emphasis added). Generally speaking, subsections 552.108(a)(1) and 552.108(b)(1) are mutually exclusive of subsections 552.108(a)(2) and 552.108(b)(2). Subsections 552.108(a)(1) and 552.108(b)(1) protect information that pertains to on-going criminal investigation and prosecution efforts. In contrast, subsections 552.108(a)(2) and 552.108(b)(2) protect information that relates to concluded criminal investigations or prosecutions that did not result in conviction or deferred adjudication. A governmental body that raises section 552.108 must reasonably explain how

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.

and why this exception is applicable. *See* Gov't Code § 552.301(e)(1)(A); *Ex parte Pruitt*, 551S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986).

You inform us that the information in Tab 5 of your May 12, 2004 correspondence, and in Tab 4 of your May 27, 2004 correspondence, relates to pending criminal investigations conducted by the university's police department. You state that "[r]elease of this information would interfere with [the university police department's] ability to effectively pursue the investigation and prosecution of the crimes documented in these police reports." Based on these representations, we conclude that you may withhold the information at issue in Tabs 4 and 5 pursuant to section 552.108(a)(1) of the Government Code. We note that you have the discretion to release all or part of this information that is not otherwise confidential by law. Gov't Code § 552.007.

You assert that the information in Tab 6 of your May 12, 2004 correspondence pertains to "inactive" criminal investigations. You have not identified any particular report in Tab 6 as relating to an open or pending investigation, nor have you indicated which, if any, of these reports pertains to a case that concluded in a result other than conviction or deferred adjudication. Having considered your arguments and the information in Tab 6, we find that you have failed to establish the applicability of section 552.108 to any of the information in Tab 6, and thus none of it may be withheld on that basis. *See* Gov't Code § 552.301(e)(1)(A); *Ex parte Pruitt*, 551S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986).

We note that the submitted records in Tab 6 include information relating to Texas-issued motor vehicle records. Section 552.130 of the Government Code excepts from disclosure "information [that] relates to . . . a motor vehicle operator's or driver's license or permit issued by an agency of this state [or] a motor vehicle title or registration issued by an agency of this state." Gov't Code § 552.130(a)(1), (2). The university must withhold the information you have marked pursuant to this exception.

In addition, we note that the submitted records in Tab 6 include social security numbers, which may be confidential under federal law. Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision" and encompasses information that another statute makes confidential. In 1990, the Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), was amended to make confidential social security numbers and related records that are obtained or maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See* Open Records Decision No. 622 (1994). We have no basis for concluding that the social security numbers at issue are confidential under section 405(c)(2)(C)(viii)(I) and therefore excepted from public disclosure under section 552.101 on the basis of that federal provision. We caution, however, that section 552.352 of the Government Code imposes criminal penalties for the release of confidential information. Prior to releasing any social security number

information, you should ensure that such information is not obtained or maintained by the university pursuant to any provision of law enacted on or after October 1, 1990.

In summary, the university may withhold the information in Tabs 4 and 5 pursuant to section 552.108(a)(1) of the Government Code. The university must withhold the Texas-issued motor vehicle record information you have marked in Tab 6 under section 552.130. Social security numbers may be confidential under federal law. The remaining submitted information must be released to the requestor.

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 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,



Lauren E. Kleine
Assistant Attorney General
Open Records Division

LEK/seg

Ref: ID# 204802

Enc. Submitted documents

c: Mr. Michael Hernandez
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El Paso, Texas 79907
(w/o enclosures)