



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 23, 2005

Ms. Carol Longoria  
Office of General Counsel  
The University of Texas System  
201 West 7<sup>th</sup> Street  
Austin, Texas 78701-2902

OR2005-04440

Dear Ms. Longoria:

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# 224618.

The University of Texas at Dallas (the "university") received a request for "all information regarding or related to all attempted and actual murders/non-negligent homicides, negligent manslaughters, sexual assault, aggravated sexual assault, other sex offenses of any kind, robberies, and aggravated assaults" on the university's campus for a three year period. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>1</sup>

Initially, you inform us that the requestor made an earlier request on January 25, 2005 "for information on these same cases." You state that in response, the university contacted the requestor via telephone to discuss the scope of the request and ascertain precisely the information she sought. *See* Gov't Code § 552.222 (allowing governmental body to ask

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<sup>1</sup>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.

requestor to clarify or narrow request for information); Open Records Decision No. 663 at 2-5 (1999) (discussing requests to clarify or narrow request for information). You further inform us that, pursuant to those communications with the requestor, the university understood that the requestor only sought the front pages of the reports at issue, and that the university released the front pages to the requestor with redactions.<sup>2</sup> Therefore, you argue that the front pages of these reports are not responsive to the request. We note, however, that the requestor did not limit her second request to information not previously received from the university, but rather, has asked for "all information regarding or related to" certain offenses. Therefore, we find that the submitted information is responsive to the request in its entirety, and we will address all of the submitted information in this ruling. However, with regard to the previously released information, the university may either release to the requestor any information that the requestor had previously obtained or make certification to the requestor of what information was previously furnished. See Gov't Code sec. 552.232 (providing that governmental body shall certify to requestor that copies of all or part of requested information, as applicable, were previously furnished to requestor).<sup>3</sup>

Section 552.108 of the Government Code provides in pertinent part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 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[.]

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<sup>2</sup>You have submitted a sample of information you state was previously redacted from the front pages of these reports.

<sup>3</sup>We note that section 552.232(d) provides that "[t]his section does not apply to information for which the governmental body has not previously furnished copies to the requestor or made copies available to the requestor on payment of applicable charges under Subchapter F. A request by the requestor for information for which copies have not previously been furnished or made available to the requestor, including information for which copies were not furnished or made available because the information was redacted from other information that was furnished or made available or because the information did not yet exist at the time of an earlier request, shall be treated in the same manner as any other request for information under this chapter."

(c) This section does not except from the requirements of Section 552.021 information that is basic information about an arrested person, an arrest, or a crime.

Gov't Code § 552.108(a)(1)-(2), (c). A governmental body claiming section 552.108(a)(1) must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). 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 inform us that the offense reports submitted in Tab 4 pertain to active investigations. You assert that the release of the information that relates to these cases would interfere with the detection and investigation of crime. Based on your representations, we find that you have established that release of the information in Tab 4 would interfere with the detection, investigation, or prosecution of crime. *See 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) (court delineates law enforcement interests that are present in active cases). You also inform us that the information in Tab 5 relates to closed investigations that concluded in a result other conviction or deferred adjudication. Tab 5 is therefore subject to section 552.108(a)(2).

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*. *See* 531 S.W.2d at 185; Open Records Decision No. 127 (1976) (summarizing types of information made public by *Houston Chronicle*). The department must generally release basic information, including a detailed description of the offense and the identity of the complaint, even if this information does not literally appear on the front page of an offense or arrest report. *See Houston Chronicle*, 531 S.W.2d at 186-87; ORD 127 at 3-4 (1976) (summarizing types of information deemed 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.<sup>4</sup> *See Indus. Found. v. Tex. 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, identifying information concerning the sexual assault victims must be withheld pursuant to section 552.101 and common-law privacy. Although

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<sup>4</sup>Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision” and encompasses common-law privacy.

section 552.108(a)(1) authorizes the university to withhold the remainder of Tab 4 and section 552.108(a)(2) authorizes the university to withhold the remainder of Tab 5, it may choose to release all or part of this 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. *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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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); *Tex. 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,

A handwritten signature in black ink, appearing to read "Elizabeth A. Stephens", written in a cursive style.

Elizabeth A. Stephens  
Assistant Attorney General  
Open Records Division

EAS/krl

Ref: ID#224618

Enc. Submitted documents

c: Kelsey Guy  
c/o The Freedom of Information Foundation of Texas  
400 S. Record Street, Suite 240  
Dallas, TX 75202  
(w/o enclosures)