



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 20, 2006

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

OR2006-01439A

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# 250353.

The University of Texas at Austin (the "university") received a request for all investigation information regarding a specific incident, including the incident report and additional surveillance footage, as well as a named person's personnel file. You state that you do not have any of the requested surveillance footage.¹ You state that you will release some of the remaining requested information. The university sought a ruling from this office as to whether the remaining requested information was excepted from disclosure under the Act and, in response, this office issued Open Records Letter No. 2006-01439 (2006). We have reexamined our ruling in that decision and have determined that an error was made in its issuance. When this office determines that an error was made in the decisional process under sections 552.301 and 552.306 of the Government Code and that the error resulted in an incorrect decision, we will correct the previously issued ruling. As we have determined that Open Records Letter 2006-01439 is incorrect, we hereby withdraw the prior ruling. This decision is substituted for Open Records Letter No. 2006-01439 and serves as the correct ruling.

¹The Act does not require a governmental body to release information that did not exist when a request for information was received, create information responsive information, or obtain information that is not held by or on behalf of the system. See *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986).

The university claims that the submitted 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 information.

Initially, we note that the university has not submitted copies or samples of the requested personnel information to this office for review. Thus, we assume that any information maintained by the university that is responsive to this portion of the request has been released to the requestor, to the extent it exists. If not, the university must release such information immediately. *See* Gov't Code §§ 552.006, .301, .302; Open Records Decision No. 664 (2000) (concluding that section 552.221(a) requires that information not excepted from disclosure must be released as soon as possible under the circumstances).

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 information at issue relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. You state that the submitted information pertains to a case that is closed and concluded in a result other than conviction or deferred adjudication. Therefore, we agree that section 552.108(a)(2) of the Government Code is applicable.

We note, however, section 552.108 does not except from disclosure basic information about an arrest, an arrested person, or a crime. Gov't Code § 552.108(c). Such basic information refers to the information held to be public in *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). *See* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Therefore, with the exception of the basic information, the university may withhold the submitted information under section 552.108(a)(2) of the Government Code.² Although section 552.108(a)(2) authorizes you to withhold the remaining information from disclosure, you may choose to release all or part of the information at issue 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

²Because our ruling is dispositive, we need not address your additional argument.

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).

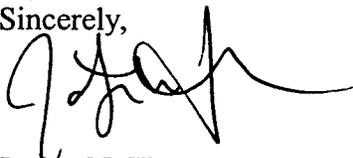
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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); *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 Office of the Attorney General 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. 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,



Jacklyn N. Thompson
Assistant Attorney General
Open Records Division

JNT/sdk

Ref: ID# 250353

Enc. Submitted documents

c: Ms. Naomi King
The Daily Texan
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(w/o enclosures)