



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 23, 2007

Ms. Tammye Curtis-Jones
Associate General Counsel
Texas Southern University
3100 Cleburne Avenue
Houston, Texas 77004

OR2007-09290

Dear Ms. Curtis-Jones:

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 #284506.

Texas Southern University (the "university") received a request for a student's complete disciplinary file. You claim that the submitted information, which consists of e-mailed witness statements pertaining to a specific event, is excepted from disclosure under sections 552.101, 552.108, and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.108(a) of the Government Code excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime... if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime." Gov't Code § 552.108(a)(1). Generally, a governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

You state that the submitted e-mails relate to an investigation by both the university's Office of Student Affairs and the university's Police Department. On July 12, 2007, this office requested a clarification from the university indicating for which department and for what purpose these e-mails were created and maintained. *See Gov't Code § 552.303(c)* (providing

that attorney general may give written notice to governmental body that additional information is necessary to render a decision). You responded that these e-mails were created at the request of the Office of Student Affairs, but that they were provided to the Police Department to assist in their investigation of the alleged criminal activity. You also state that these e-mails are currently maintained in both the university's Office of Student Affairs and the university's Police Department files. Although the Harris County District Attorney refused to file charges pertaining to the university Police Department's investigation, you state that the victim of the threat has not ruled out the pursuit of her own criminal charges against the suspect. You assert that release of the information at issue would interfere with further investigation by another law enforcement entity. We note that the requestor asked for his student disciplinary file, not the police department's file. However, based on your representation regarding the potential criminal investigation and our review of the submitted documents, we conclude in this instance that release of records maintained in the Office of Student Affairs disciplinary file would interfere with potential criminal investigation or prosecution. Accordingly, we rule that the submitted e-mails may be withheld at this time under section 552.108(a)(1) so as not to interfere with the investigation and prosecution of this crime. See Open Records Decision No. 372 (1983) (where incident involving allegedly criminal conduct is still under active investigation or prosecution, section 552.108 may be invoked by any proper custodian of information relating to incident).

As noted above, the records specified in the request are maintained by the university's Office of Student Affairs, not the university's Police Department, and are therefore educational records as opposed to law enforcement records. The Family Education Rights and Privacy Act ("FERPA") does not apply to records created by law enforcement agencies for law enforcement purposes. See 20 U.S.C. § 1232g(a)(4)(B)(ii); 34 C.F.R. §§ 99.3, 99.8. The United States Department of Education Family Policy Compliance Office (the "DOE") has informed this office that FERPA, section 1232g of title 20 of the United States Code, does not permit state and local educational authorities to disclose to this office, without parental consent, unredacted, personally identifiable information contained in education records for the purposes of our review in the open records ruling process under the Act. Consequently, state and local educational authorities that receive a request for education records from a member of the public under the Act must not submit education records to this office in unredacted form, that is, in a form in which "personally identifiable information" is disclosed. See 34 C.F.R. § 99.3 (defining "personally identifiable information"). You have submitted for our review unredacted e-mails which are maintained by the Office of Student Affairs. Should the university determine that all or portions of the submitted e-mail communications consist of "education records" that must be withheld under FERPA, then the university must dispose of that information in accordance with FERPA, rather than the Act. Because our office is prohibited from reviewing education records, we will not address the applicability of FERPA to the information at issue. Such determinations under FERPA must be made by the educational authority in possession of the education record.

In summary, should the university determine that all or portions of the submitted e-mail communications consist of "education records" that must be withheld under FERPA, then the university must dispose of that information in accordance with FERPA, rather than the Act. If the university determines that the submitted e-mails are not educational records, the university may withhold the requested information under section 552.108(a)(1).

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); *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,

A handwritten signature in black ink that reads "Reg Hargrove". The signature is written in a cursive style with a long horizontal flourish extending to the right.

Reg Hargrove
Assistant Attorney General
Open Records Division

RJH/jb

Ref: ID# 284506

Enc. Submitted documents

c: Mr. Damon Lovell
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(w/o enclosures)