



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 7, 2010

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

OR2010-00302

Dear Ms. Chatterjee:

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# 366523 (OGC # 21947).

The University of Texas at Dallas (the "university") received a request for information pertaining to a specified incident involving the requestor. You state you have released some of the requested information. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.117, 552.130, and 552.136 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We note some of the submitted information is related to a polygraph examination in which the requestor was the examinee. Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception encompasses information that other statutes make confidential. Section 1703.306 of the Occupations Code provides in part:

- (a) A polygraph examiner, trainee, or employee of a polygraph examiner, or a person for whom a polygraph examination is conducted or an employee of the person, may not disclose information acquired from a polygraph examination to another person other than:

(1) the examinee or any other person specifically designated in writing by the examinee[.]

Occ. Code § 1703.306. We have marked information acquired from a polygraph examination that is confidential under section 552.101 in conjunction with section 1703.306. We note that the university has the discretion to release the marked information to the requestor pursuant to section 1703.306(a)(1). *See* Open Records Decision No. 481 at 9 (1987) (statutory predecessor to Occ. Code § 1703.306 permitted, but did not require, examination results to be disclosed to polygraph examinees).

Section 552.108(a)(2) excepts from disclosure information concerning an investigation that did not result in conviction or deferred adjudication. *See* Gov't Code § 552.108(a)(2). 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. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested); *See also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the remaining information pertains to a criminal investigation by the university's police department that has concluded and did not result in conviction or deferred adjudication. Based on your representation and our review, we find that section 552.108(a)(2) is generally applicable to information at issue.

We note that 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). Section 552.108(c) refers to the basic front-page 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.*, 536 S.W.2d 559 (Tex. 1976), and includes, among other things, an identification and description of the complainant, a detailed description of the offense, and any property involved. *See* Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). However, basic information described in *Houston Chronicle* does not include Texas motor vehicle information subject to section 552.130 of the Government Code. Thus with the exception basic information, including the property involved and complainant's identity, the university may withhold the rest of the information you have marked under section 552.108(a)(2).<sup>1</sup>

In summary, the marked information that was acquired from a polygraph examination is confidential under section 1703.306 of the Occupations Code, but the university has the discretion to release the marked information to the requestor pursuant to section 1703.306(a)(1). With the exception of basic information, the university may

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<sup>1</sup>As our ruling for this information is dispositive, we need not address your remaining arguments against its disclosure.

withhold the remaining information you have marked under section 552.108(a)(2) of the Government Code. The remaining information must be released.<sup>2</sup>

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Paige Lay  
Assistant Attorney General  
Open Records Division

PL/eeg

Ref: ID# 366523

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)

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<sup>2</sup>We note that the requestor has a special right of access to some of the information being released in this instance. Gov't Code § 552.023(a) (person or person's authorized representative has a special right of access to records that contain information relating to the person that are protected from public disclosure by laws intended to protect that person's privacy interests). Because such information may be confidential with respect to the general public, if the university receives another request for this information from a different requestor, the university must again seek a ruling from this office.