



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 7, 2010

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

OR2010-00321

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# 366522.

The University of Texas-Pan American Police Department (the "department") received two requests from different requestors for the incident report pertaining to a specified accident. You have redacted social security numbers pursuant to section 552.147(b) of the Government Code.¹ You claim the submitted information is excepted from disclosure under sections 552.101, 552.103, 552.117, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the submitted information is subject to section 552.022 of the Government Code. Section 552.022(a)(1) of the Government Code provides for the required public disclosure of "a completed report, audit, evaluation, or investigation made of, or, or by a governmental body, except as provided by Section 552.108." Gov't Code § 552.022(a)(1). As you acknowledge, the submitted information is a completed report. This information is subject to section 552.022(a)(1). Therefore, the department may only withhold this information if it is subject to section 552.108 or confidential under "other law."

¹Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. See Gov't Code § 552.147(b).

Section 552.103 of the Government Code is a discretionary exception under the Act and does not constitute “other law” for purposes of section 552.022. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). Thus, the submitted information may not be withheld under section 552.103. However, sections 552.101, 552.117, and 552.130 of the Government Code are other laws for the purposes of section 552.022(a)(1). Therefore, we will consider your arguments under these exceptions.

Section 552.101 of the Government Code excepts from public 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. You raise section 552.101 in conjunction with section 51.971 of the Education Code, which provides in part:

(a) In this section:

(1) “Compliance program” means a process to assess and ensure compliance by the officers and employees of an institution of higher education with applicable laws, rules, regulations, and policies, including matters of:

- (A) ethics and standards of conduct;
- (B) financial reporting;
- (C) internal accounting controls; or
- (D) auditing.

...

(e) Information produced in a compliance program investigation the release of which would interfere with an ongoing compliance investigation is excepted from disclosure under [the Act].

Educ. Code § 51.971(a), (e). Section 51.971 defines a compliance program as a process to assess and ensure compliance by officers and employees of an institution of higher education. *Id.* § 51.971(a)(1). The legislative history for section 51.971 explains “[t]he goal of a compliance program is to prevent theft, fraud, and ethics violations[.]” Senate Research Center, Bill Analysis, Tex. H.B. 4189, 81st Leg., R.S. (2009). The legislative history further explains the purpose of section 51.971 is to encourage both the reporting of potential problems by institution employees and the participation of employees in subsequent

investigations, by protecting the identity of employees who report compliance concerns or participate in compliance investigations. *Id.*

You state, "any time there is an injury on campus, the [department] is dispatched to determine if emergency services are required and to initiate an incident report documenting the events surrounding the injury." You further state "the [department] responds not in a role solely as law enforcement officers, but also as [University of Texas-Pan American (the "university")] employees who begin the [u]niversity's internal compliance process[.]" As you stated, the department responded to the incident at issue as law enforcement officers to document the events surrounding the incident. Thus, we find the information at issue consists of law enforcement records that are maintained separate and apart from a compliance investigation. We also note the request for information was made to the department and seeks information relating to the incident at issue rather than compliance investigation records. The department may not engraft the confidentiality of section 51.971 to records that exist independently of a compliance investigation. Thus, no portion of the submitted information may be withheld under section 552.101 in conjunction with section 51.971 of the Education Code.

Section 552.117(a)(1) of the Government Code excepts from disclosure the home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024. *See Gov't Code § 552.117(a)(1)*. We note section 552.117 only applies to records the governmental body is holding in an employment capacity. In this instance, the information you seek to withhold under section 552.117 is contained in a law enforcement record and is not held by the department in an employment capacity. Thus, none of the information you have marked may be withheld under section 552.117 of the Government Code.

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." *Id.* § 552.130. We note this exception protects personal privacy. Therefore, the first requestor has a special right of access to his client's Texas driver's license number under section 552.023 of the Government Code, and that information may not be withheld from the first requestor under section 552.130. *See id.* § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). The department must, however, withhold the Texas motor vehicle record information pertaining to other individuals from the first requestor under section 552.130. The department must withhold all of the marked Texas motor vehicle record information

from the second requestor under section 552.130 of the Government Code.² As you raise no further exceptions to disclosure of the remaining information, it must be released.

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_ori.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,



Matt Entsminger
Assistant Attorney General
Open Records Division

MRE/dls

Ref: ID# 366522

Enc: Submitted documents

c: Requestors
(w/o enclosures)

²We note this office recently issued Open Records Decision No. 684 (2009), a previous determination authorizing all governmental bodies to withhold ten categories of information, including Texas driver's license and license plate numbers under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.