



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 30, 2010

Mr. Fernando C. Gomez, J.D., Ph.D.
Vice Chancellor and General Counsel
The Texas State University System
200 East 10th Street, Suite 600
Austin, Texas 78701-2407

OR2010-09648

Dear Mr. Gomez:

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# 384892.

Lamar University (the "university") received a request for seven categories of information pertaining to a specified police officer, two categories of information pertaining to racial profiling, and registered agent information for the university. The university has released information responsive to the requests for the address for process service for the named police officer and the registered agent information for the university. You state the university is withholding certain information pursuant to Open Records Decision No. 684 (2009).¹ You claim that the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.103, 552.108, 552.117, 552.119, 552.130, and 552.147 of

¹You inform us the university is withholding the following information: the named police officer's I-9 forms under section 552.101 of the Government Code in conjunction with section 1324a of title 8 of the United States Code; fingerprints under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code; L-2 and L-3 Declarations under section 552.101 of the Government Code in conjunction with section 1701.306 of the Occupations Code; a copy of a driver's license under section 552.130 of the Government Code; and an insurance policy number under section 552.136 of the Government Code. We note this office recently issued Open Records Decision No. 684, a previous determination authorizing all governmental bodies to withhold ten categories of information, without the necessity of requesting an attorney general decision.

the Government Code.² We have considered the exceptions you claim and reviewed the submitted information.³ We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

Initially, we note some of the submitted information is not responsive to the instant request for information. The requestor seeks, in part, the arrest history of the named police officer with racial designations of persons arrested by this officer. Accordingly, the submitted information that pertains to the arrest history of police officers other than the named police officer is not responsive to this portion of the request. This ruling does not address the public availability of nonresponsive information, and the university is not required to release nonresponsive information in response to this request.

Next, we note some of the responsive information is subject to section 552.022 of the Government Code, which provides in pertinent part:

(a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108;

...

(3) information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body[.]

Gov't Code § 552.022(a)(1), (3). The responsive information includes completed evaluations and reports and a voucher related to the expenditure of public funds. These documents fall within the purview of subsections 552.022(a)(1) and 552.022(a)(3),

²Although you did not raise sections 552.119 and 552.130 until the fifteen-business-day deadline, because these sections are mandatory exceptions, we will address the applicability of your arguments. *See* Gov't Code §§ 552.301(b), 302.

³We 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.

respectively. The university may only withhold the information subject to subsection 552.022(a)(1) if it is excepted from disclosure under section 552.108 of the Government Code or is expressly made confidential under other law. The university may only withhold the information subject to subsection 552.022(a)(3) if it is confidential under other law. You claim the information subject to section 552.022 is excepted from disclosure under sections 552.103 and 552.108 of the Government Code. However, these sections are discretionary exceptions that protect a governmental body's interests and are, therefore, not "other law" for purposes of section 552.022(a)(3). *See id.* § 552.007; *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); Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 586 (1991) (governmental body may waive section 552.108). Therefore, the university may not withhold the information subject to subsection 552.022(a)(3), which we have marked, under sections 552.103 or 552.108 of the Government Code. Additionally, the university may not withhold the information subject to subsection 552.022(a)(1) under section 552.103 of the Government Code. As you raise no further exceptions to the disclosure of the information subject to subsection 552.022(a)(3), this information must be released. However, we will consider your claim under section 552.108 of the Government Code for the information subject to subsection 552.022(a)(1). Furthermore, because information subject to section 552.022(a)(1) may be withheld as provided by sections 552.101 and 552.102, we will consider your arguments under these exceptions for the information subject to section 552.022(a)(1), along with the additional claims you make for the remaining submitted information.

We now turn to your argument for the responsive information that is not subject to section 552.022(a)(3). 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), (b)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You inform us that the responsive information is related to a pending criminal prosecution resulting from the requestor's arrest by the named police officer. You have submitted an affidavit from the Jefferson County District Attorney's Office stating that the release of the information at issue would interfere with the pending criminal prosecution because the information could be used for impeachment purposes at trial. Based upon these representations and our review, we conclude that the release of this information 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). Therefore, the information at

issue may be withheld pursuant to section 552.108(a)(1).⁴ We note that you have the discretion to release all or part of the information that is not otherwise confidential by law. Gov't Code § 552.007.

In summary, the university must release the information we have marked pursuant to subsection 552.022(a)(3) of the Government Code. The university may withhold the remaining responsive information under section 552.108(a)(1) of the Government Code.

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, 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,



Tamara H. Holland
Assistant Attorney General
Open Records Division

THH/jb

Ref: ID# 384892

Enc. Submitted documents

c: Requestor
(w/o enclosures)

⁴As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.