



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 15, 2010

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

OR2010-13990

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# 393629 (OGC# 131194).

The University of Texas at Austin (the "university") received a request for information pertaining to the death of the requestor's sister. You state that some information has been released. You claim that the remaining requested information is excepted from disclosure under sections 552.103, 552.108, 552.1175, 552.130, and 552.136 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

Initially, you state that some of the submitted information was the subject of a prior ruling by this office. *See* Open Records Ruling Number 2010-05156 (2010). You also state that the criminal investigation has since concluded and did not result in a conviction or a deferred adjudication. Thus, you acknowledge the facts and circumstances have changed with regards

¹We 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.

to the information at issue since the issuance of the previous ruling, and the university may not continue to rely on Open Records Letter No. 2010-05156 as a previous determination for this information. *See* Open Records Decision No. 673 (2001). Accordingly, we will address the submitted arguments against disclosure of the entirety of the submitted information.

We note the submitted information consists of a completed investigation, which is subject to section 552.022(a)(1) of the Government Code. This section provides for the required public disclosure of “a completed report, audit, evaluation, or investigation made of, for, or by a governmental body,” unless the information is expressly confidential under other law or excepted from disclosure under section 552.108 of the Government Code. Gov’t Code § 552.022(a)(1). Although you raise section 552.103 of the Government Code for this information, section 552.103 is a discretionary exception to disclosure that protects a governmental body’s interests and may be waived. *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 No. 665 at 2 n.5 (discretionary exceptions generally), 663 (1999) (governmental body may waive section 552.103). As such, section 552.103 is not “other law” that makes information confidential for the purposes of section 552.022. Therefore, the university may not withhold the submitted information under section 552.103 of the Government Code. However, because information subject to section 552.022(a)(1) may be withheld under sections 552.108, 552.1175, 552.130, and 552.136 of the Government Code, we will consider the applicability of these exceptions to the submitted information.

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. *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 concluded in a final result other than a conviction or deferred adjudication. *See id.* §§ 552.108(a)(2), .301(e)(1)(A). You state that the information you have marked pertains to a closed investigation that did not result in a conviction or deferred adjudication. Based on your representations and our review of the information at issue, we conclude that the university has demonstrated that section 552.108(a)(2) is applicable to the marked information.

However, 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 Publishing 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). Therefore, with the exception of basic information, which you state has already been released, the university may withhold the

information you have marked under section 552.108(a)(2) of the Government Code.² The remaining submitted information must be released to the requestor.

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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/dls

Ref: ID# 393629

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²As our ruling is dispositive, we do not address your remaining claims.