



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 3, 2011

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

OR2011-16218

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# 435179.

Texas Southern University (the "university") received a request for information pertaining to a named former employee, any contracts between the university and a named entity for a specified time period, and any records of payments made to fifteen specified individuals and businesses during a specified time period.¹ You claim that the requested information is excepted from disclosure under sections 552.101, 552.102, 552.103, 552.108, and 552.117 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

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

¹You state the requestor modified her request for information. See Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request).

(a) [T]he 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; [and]

...

(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 submitted information contains a completed evaluation and two completed reports that fall within the purview of section 552.022(a)(1), and a contract and other documents relating to the expenditure of public funds that fall within the purview of section 552.022(a)(3). The university may withhold the information subject to section 552.022(a)(1) only if it is made confidential under "other law" or excepted from disclosure under section 552.108 of the Government Code. *Id.* § 552.022(a)(1). The submitted contract and other documents are generally a matter of public record under section 552.022(a)(3) of the Government Code and may only be withheld if expressly confidential under other law. *See id.* § 552.022(a)(3). You claim the submitted contract and other documents are excepted from disclosure under sections 552.103 and 552.108 of the Government Code. However, sections 552.103 and 552.108 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 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 submitted contract and other documents, which we have marked, under section 552.103 or section 552.108 of the Government Code. As you raise no further exceptions to disclosure of the contract and other documents, they must be released. Additionally, although you raise section 552.103 for the completed evaluation and completed reports, this section is not "other law" for purposes of section 552.022(a)(1). Therefore, the university may not withhold the completed evaluation or completed reports under section 552.103. However, we will address whether the completed evaluation and reports may be withheld under section 552.108 of the Government Code. Additionally, we will consider your arguments under sections 552.101, 552.102, 552.103, 552.108, and 552.117 of the Government Code for the remaining information that is not subject to section 552.022.

Section 552.108(a)(1) of the Government Code exempts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . 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(a)(1) must reasonably explain how and why 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). Section 552.108 may be invoked by any proper custodian of information relating to a pending investigation or prosecution of criminal conduct. *See Open Records Decision No. 474 at 4-5 (1987)*. Where a non-law enforcement agency has custody of information that would otherwise qualify for exception under section 552.108 as information relating to the pending case of a law enforcement agency, the custodian of the records may withhold the information if it provides this office with a representation from the law enforcement agency that it wishes to have the information withheld and a demonstration the information relates to the pending case.

You state, and provide documentation demonstrating, the United States Department of Education Office of Inspector General (“DOE-OIG”) objects to the release of the submitted information because its release would interfere with an open criminal investigation being conducted by the DOE-OIG. We understand the DOE-OIG is a law enforcement agency with the power to investigate and prosecute crimes. *See 5 U.S.C. app. 3 §§ 4, 6 (1978)*. Based on these representations and our review, we conclude release of the information at issue 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) (court delineates law enforcement interests that are present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, section 552.108(a)(1) is applicable to the information that is not subject to section 552.022(a)(3), and the university may withhold this information under section 552.108(a)(1).²

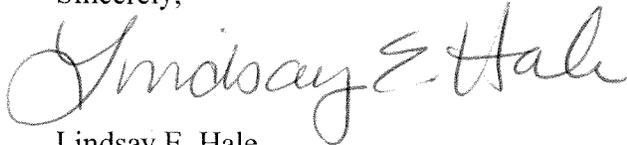
In summary, the university must release the contract and other documents we have marked pursuant to section 552.022(a)(3) of the Government Code. The university may withhold the remaining information under section 552.108(a)(1) of the Government Code on behalf of the DOE-OIG.

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.

²As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

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,

A handwritten signature in cursive script that reads "Lindsay E. Hale". The signature is written in black ink and is positioned above the typed name.

Lindsay E. Hale
Assistant Attorney General
Open Records Division

LEH/ag

Ref: ID# 435179

Enc. Submitted documents

c: Requestor
(w/o enclosures)