



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 30, 2011

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

OR2011-17609

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# 437418.

Texas Southern University (the "university") received six requests from the same requestor for information pertaining to (1) payments made to Fort Bend Mechanical, (2) the remodeling of Hannah Hall during a specified time period, (3) spending for repairs after Hurricane Ike, (4) the renovation of a specified office, (5) communications between the United States Department of Education and university administration during a specified time period, and (6) communications between the Federal Bureau of Investigation and university administration during a specified time period. You claim the submitted information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>1</sup>

Initially, we note the requestor excludes e-mail addresses of private citizens and confidential bank and credit card information from the scope of four of the requests for information.

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<sup>1</sup>We assume 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 those records contain substantially different types of information than that submitted to this office.

Accordingly, these types of information are not responsive to those four requests for information. We further note some of the submitted information, which we have marked, is not responsive to the instant requests for information because it consists of copies of the requests for information at issue or was created after the university received the requests for information. This ruling does not address the public availability of any information that is not responsive to the requests and the university is not required to release such information in response to the requests.

Next, we note some of the submitted information is subject to section 552.022 of the Government Code. Section 552.022(a) provides, in relevant part:

(a) [T]he following categories of information are public information and not excepted from required disclosure under this chapter unless made confidential under this chapter or 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; [and]

...

(5) all working papers, research material, and information used to estimate the need for or expenditure of public funds or taxes by a governmental body, on completion of the estimate[.]

Act of May 30, 2011, 82nd Leg., R.S., S.B. 602, § 2 (to be codified as an amendment to Gov't Code § 552.022(a)). The submitted information includes completed reports that are subject to section 552.022(a)(1). The university must release the completed reports pursuant to section 552.022(a)(1) unless they are excepted from disclosure under section 552.108 of the Government Code or are made confidential under the Act or other law. *Id.* The submitted information also contains information in accounts, contracts, invoices, purchase orders, and receipts that are subject to section 552.022(a)(3). Further, portions of the submitted information fall within the scope of section 552.022(a)(5). The university must release information subject to subsections 552.022(a)(3) and 552.022(a)(5) unless it is made confidential under the Act or other law. *Id.* You seek to withhold the information subject to section 552.022 under sections 552.103 and 552.108 of the Government Code. As

information subject to section 552.022(a)(1) may be withheld under section 552.108 of the Government Code, we will consider your argument under section 552.108 for that information. However, sections 552.103 and 552.108 are discretionary and do not make information confidential under the Act. *Id.* §§ 3-26, 28-37 (providing for “confidentiality” of information under specified exceptions); *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 Gov’t Code § 552.103); *see also* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 542 at 4 (1990) (statutory predecessor to section 552.103 may be waived), 177 at 3 (1977) (statutory predecessor to Gov’t Code § 552.108 subject to waiver). Therefore, the information subject to section 552.022 may not be withheld under section 552.103 of the Government Code. Further, the information subject to subsections 552.022(a)(3) and 552.022(a)(5) may not be withheld under section 552.108 of the Government Code. Thus, the university must release the information we have marked pursuant to subsections 552.022(a)(3) and 552.022(a)(5).

Section 552.108(a)(1) 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), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). Section 552.108 may be invoked by the 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(a)(1) 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 demonstration that the information relates to the pending case and a representation from the law enforcement agency that it wishes to have the information withheld.

You have provided our office with a statement from the Investigation Services Division of the Office of the Inspector General of the United States Department of Education (the “OIG”). You explain the OIG is a law enforcement agency for purposes of section 552.108 of the Government Code. *See* 5 U.S.C. app. 3 §§ 4, 6 (1978). In its statement, the OIG states it is conducting a criminal investigation regarding allegations of potential fraud occurring at the university. The OIG further asserts the submitted information is critical to its prosecution of the pending case. Thus, the OIG objects to the release of the information at issue because its release would unduly interfere with the pending criminal prosecution. Based upon the OIG’s representations, we conclude release of the information at issue will 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). Accordingly, the university may withhold the remaining information under section 552.108(a)(1) of the Government Code on behalf of the OIG.<sup>2</sup>

In summary, the university must release the information we have marked pursuant to subsections 552.022(a)(3) and 552.022(a)(5) 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 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.

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,



Claire V. Morris Sloan  
Assistant Attorney General  
Open Records Division

CVMS/agn

Ref: ID# 437418

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>2</sup>As our ruling is dispositive with respect to the information at issue, we need not address your argument under section 552.103 of the Government Code against its disclosure.