



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 20, 2014

Ms. Ana Vieira
Office of the General Counsel
University of Texas System
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OR2014-03196

Dear Ms. Vieira:

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# 514635 (OGC No. 153436).

The University of Texas Medical Branch at Galveston (the "university") received a request for personnel records of a named university police officer. You state the university will redact information pursuant to sections 552.024(c), 552.130(c), and 552.147(b) of the Government Code and Open Records Decision No. 684 (2009).¹ You claim the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.103, 552.108, and 552.122 of the Government Code. Additionally, you state release of some of the

¹Section 552.024(c)(2) of the Government Code authorizes a governmental body to redact information protected by section 552.117(a)(1) of the Government Code without the necessity of requesting a decision under the Act if the current or former employee or official to whom the information pertains timely chooses not to allow public access to the information. *See* Gov't Code § 552.024(c)(2). Section 552.130(c) of the Government Code allows a governmental body to redact the information described in subsection 552.130(a) without the necessity of seeking a decision from the attorney general. *See id.* § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e). Section 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 an attorney general decision under the Act. *See id.* § 552.147(b). Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold certain categories of information, including an e-mail address of a member of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general opinion. *See* ORD 684.

submitted information may implicate the proprietary interests of the Galveston County Sheriff's Office, the Galveston Police Department, and the Texas City Police Department (collectively, the "third parties"). Accordingly, you notified the third parties of the request and of their right to submit arguments to this office as to why the submitted information should not be released. *See* Gov't Code § 552.304. As of the date of this letter, we have not received comments from the third parties. We have considered the submitted arguments and reviewed the submitted representative sample of information.²

Initially, we note the submitted information contains a peace officer's Texas Commission on Law Enforcement Officer Standards and Education ("TCLEOSE") identification number. In Open Records Decision No. 581 (1990), this office determined certain computer information, such as source codes, documentation information, and other computer programming, that has no significance other than its use as a tool for the maintenance, manipulation, or protection of public property is not the kind of information made public under section 552.021 of the Government Code. We understand an officer's TCLEOSE identification number is a unique computer-generated number assigned to peace officers for identification in the commissioner's electronic database, and may be used as an access device number on the TCLEOSE website. Accordingly, we find the officer's TCLEOSE identification number in the submitted information does not constitute public information under section 552.002 of the Government Code. Therefore, the TCLEOSE identification number is not subject to the Act and need not be released to the requestor.

Next, we note you have marked portions of the submitted information as not responsive to the present request for information. This ruling does not address the public availability of non-responsive information, and the university need not release it in response to this request.

Next, we note portions of the submitted information are 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 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[.]

²We 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 that those records contain substantially different types of information than that submitted to this office.

Gov't Code § 552.022(a)(1). Some of the submitted information consists of two completed compliance investigations and a completed internal investigation subject to subsection 552.022(a)(1). The university must release the completed investigations pursuant to subsection 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. *See id.* § 552.022(a)(1). You seek to withhold the information subject to subsection 552.022(a)(1) under section 552.103. However, section 552.103 is a discretionary exception and does not make information confidential under the Act. *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). Accordingly, the university may not withhold the information subject to subsection 552.022(a)(1) under section 552.103. However, because you raise section 552.108 of the Government Code for some of this information, we will address the applicability of that section to the information at issue. Additionally, because section 552.101 of the Government Code can make information confidential under the Act, we will address the applicability of that section to the information subject to subsection 552.022(a)(1). We will also address your arguments for the information not subject to subsection 552.022(a)(1).

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov't Code § 552.101. This section encompasses information protected by other statutes. Section 51.971 of the Education Code provides in relevant part the following:

(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.

(2) “Institution of higher education” has the meaning assigned by Section 61.003.

...

(c) The following are confidential:

(1) information that directly or indirectly reveals the identity of an individual who made a report to the compliance program office of an institution of higher education, sought guidance from the office, or participated in an investigation conducted under the compliance program; and

(2) information that directly or indirectly reveals the identity of an individual as a person who is alleged to have or may have planned, initiated, or participated in activities that are the subject of a report made to the compliance program office of an institution of higher education if, after completing an investigation, the office determines the report to be unsubstantiated or without merit.

(d) Subsection (c) does not apply to information related to an individual who consents to disclosure of the information.

Educ. Code § 51.971(a), (c)-(d). You inform us the university is an institution of higher education for purposes of section 61.003 of the Education Code. *See id.* § 51.971(a)(2). You state the information you have marked consists of completed compliance investigations conducted by the university's police department. You further state the investigations were initiated in response to allegations involving ethical questions and standards of conduct by university employees in order to assess and ultimately ensure that the university has complied with all applicable law, rules, regulations, and policies. Based on your representations, we find this information relates to an investigation conducted under the university's compliance program. *See id.* § 51.971(a)(1).

You seek to withhold the information you have marked pursuant to section 51.971(c) of the Education Code. You state the information at issue relates to closed compliance matters which resulted in final determinations that the allegations were unsubstantiated. We understand you to assert release of any of the information at issue would directly or indirectly identify the individuals making the report to, seeking guidance from, or participating in the compliance program investigations, as well as the identity of an individual alleged to have planned, initiated, or participated in activities that are the subject of the investigations. You state none of the relevant individuals have consented to the disclosure of their identifying information. Upon review of your arguments and the information at issue, we agree release of the information at issue would directly or indirectly identify individuals as complainants or participants in the compliance program investigations, or an individual who was alleged to have participated in the activities subject to the complaints. *See id.* § 51.971(c). Accordingly, the university must withhold the information you have marked under

section 552.101 of the Government Code in conjunction with section 51.971 of the Education Code.³

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 . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). A governmental body claiming section 552.108(a)(1) 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). We note section 552.108 is generally not applicable to the records of an internal affairs investigation that is purely administrative in nature and does not involve the investigation or prosecution of crime. *See City of Fort Worth v. Cornyn*, 86 S.W.3d 320 (Tex. App.—Austin 2002, no pet.); *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App. —El Paso 1992, writ denied) (statutory predecessor to section 552.108 not applicable to internal investigation that did not result in criminal investigation or prosecution); *see also* Open Records Decision No. 350 at 3-4 (1982).

You state, and provide a letter from the police chief of the university’s police department confirming, the information relating to case file 201300036140, including the completed internal investigation subject to section 552.022, pertains to an active criminal investigation and prosecution by the university’s police department and other law enforcement agencies. Based on your representation, we conclude the 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 related to case file 201300036140.

However, we note 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). Basic information refers to the information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-88; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of the basic information, the university may withhold the information you have marked under section 552.108(a)(1) of the Government Code.⁴

³As our ruling is dispositive for this information, we need not address your remaining argument against its disclosure.

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

Section 552.103 provides, in part:

(a) Information is excepted from [required public disclosure] if it is information relating to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party.

...

(c) Information relating to litigation involving a governmental body or an officer or employee of a governmental body is excepted from disclosure under Subsection (a) only if the litigation is pending or reasonably anticipated on the date that the requestor applies to the officer for public information for access to or duplication of the information.

Gov't Code § 552.103(a), (c). A governmental body that claims an exception to disclosure under section 552.103 has the burden of providing relevant facts and documentation sufficient to establish the applicability of this exception to the information that it seeks to withhold. To meet this burden, the governmental body must demonstrate that (1) litigation was pending or reasonably anticipated on the date the governmental body received the request for information, and (2) the information at issue is related to the pending or anticipated litigation. *See Univ. of Tex. Law Sch. v. Tex. Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.—Austin 1997, orig. proceeding); *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.—Houston [1st Dist.] 1984, writ ref'd n.r.e.). The governmental body must meet both prongs of this test for information to be excepted from disclosure under section 552.103(a). *See Open Records Decision No. 551 at 4 (1990).*

The question of whether litigation is reasonably anticipated must be determined on a case-by-case basis. *See Open Records Decision No. 452 at 4 (1986).* To demonstrate that litigation is reasonably anticipated, the governmental body must provide this office "concrete evidence showing that the claim that litigation may ensue is more than mere conjecture." *Id.* Concrete evidence to support a claim that litigation is reasonably anticipated may include, for example, the governmental body's receipt of a letter containing a specific threat to sue the governmental body from an attorney for a potential opposing party.⁵ *Open Records Decision No. 555 (1990); see also Open Records Decision No. 518 at 5 (1989) (litigation must be*

⁵In addition, this office has concluded that litigation was reasonably anticipated when the potential opposing party took the following objective steps toward litigation: filed a complaint with the Equal Employment Opportunity Commission, *see Open Records Decision No. 336 (1982)*; hired an attorney who made a demand for disputed payments and threatened to sue if the payments were not made promptly, *see Open Records Decision No. 346 (1982)*; and threatened to sue on several occasions and hired an attorney, *see Open Records Decision No. 288 (1981)*.

“realistically contemplated”). On the other hand, this office has determined if an individual publicly threatens to bring suit against a governmental body, but does not actually take objective steps toward filing suit, litigation is not reasonably anticipated. *See* Open Records Decision No. 331 (1982). We also note that the fact that a potential opposing party has hired an attorney who makes a request for information does not establish that litigation is reasonably anticipated. *See* Open Records Decision No. 361 (1983).

You state, and provide documentation showing, before the university received the present request for information, the university’s police department received a letter from an attorney from the same law firm as the requestor, who stated she represented a named individual regarding a case arising out of the arrest of her client by the university’s police department. In the letter, the attorney directs the university’s police department to preserve evidence for “the potential lawsuit.” Additionally, the letter states that the university’s police department should continue to preserve the evidence until “the end of litigation.” Based on these representations and our review, we find the university reasonably anticipated litigation on the date it received the request. Further, you state the remaining information relates to the anticipated litigation because the remaining information consists of personnel information of a police officer who was involved in the arrest of the attorney’s client. We agree the remaining information is related to the anticipated litigation. Thus, we find section 552.103 is applicable to the remaining information, and the university may withhold the remaining information under section 552.103 of the Government Code.⁶

We note once the information has been obtained by all parties to the anticipated litigation, through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision No. 349 at 2 (1982). We also note that the applicability of section 552.103(a) ends when the litigation is concluded or is no longer reasonably anticipated. Attorney General Opinion MW-575 (1982) at 2; Open Records Decision Nos. 350 at 3 (1982), 349 at 2.

In summary, the university must withhold the information you have marked under section 552.101 of the Government Code in conjunction with section 51.971 of the Education Code. With the exception of basic information, the university may withhold the information pertaining to case file 201300036140 you have marked under section 552.108(a)(1) of the Government Code. The university may withhold the remaining information under section 552.103 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.

⁶As our ruling is dispositive for this information, we need not address your remaining arguments against its disclosure.

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Kristi L. Wilkins
Assistant Attorney General
Open Records Division

KLW/bhf

Ref: ID# 514635

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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