OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

June 2, 2003

Mr. Jerry M. Brown
Senior Staff Attorney
Texas A&M University System
301 Tarrow, 6th floor
John B. Connally Building
College Station, Texas 77840-7896

OR2003-3684

Dear Mr. Brown:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 184337.

The Texas A&M University Police Department (the "department") received a request for a videotape copy of an interview of a Texas A&M University (the "university") employee conducted by attorneys with the Brazos County County Attorney's office (the "county attorney") and a department police officer. You argue that the information is excepted from disclosure under section 552.108 of the Government Code. We have considered your arguments and have reviewed the submitted information. We have also considered comments submitted to this office by the requestor. *See* Gov't Code § 552.304.

We first address the requestor's contention that the department did not timely submit its request for a decision to this office. Subsections 552.301(a) and (b) provide:

> (a) A governmental body that receives a written request for information that it wishes to withhold from public disclosure and that it considers to be within one of the [act's] exceptions . . . must ask for a decision from the attorney general about whether the information

> is within that exception if there has not been a previous determination about whether the information falls within one of the exceptions.
>
> (b) The governmental body must ask for the attorney general's decision and state the exceptions that apply within a reasonable time but not later than the 10th business day after the date of receiving the written request.

As the department submitted its request for a ruling to this office within the 10-day time limit imposed by section 552.301(b), we find that the department was timely in submitting its request to this office.

We next note that the requestor acknowledges in a correspondence to this office dated May 20, 2003 that the department can be considered a law enforcement agency for purposes of section 552.108. The requestor argues, however, that the university, and not the department, is in possession of the requested information. In a letter to this office of the same date, the university states that the requested information is not in the possession of the university, but rather, has been in the possession of the department since its creation. We cannot resolve disputes of fact in the open records process, and therefore, we must rely on the representations of the governmental body requesting our opinion. Open Records Decision Nos. 554 (1990), 552 (1990). Therefore, we will address the department's argument under section 552.108 for withholding the submitted information.

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[.]" A governmental body that raises section 552.108 must reasonably explain, if the requested information does not supply an explanation on its face, how and why section 552.108 is applicable to that information. *See* Gov't Code § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986).

You inform us that the requested information pertains to an investigation of a possible hazing incident within a student organization at the university. You state that the department and the county attorney cooperated in the investigation. You have submitted a copy of a letter to your office from the County Attorney for Brazos County stating that the release of the requested information would interfere with the prosecution of crime. Based on your representations, the County Attorney's letter, and our review of the requested information, we find that section 552.108(a)(1) is applicable in this instance. *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). We therefore conclude that the department may withhold the submitted information pursuant to section 552.108(a)(1).

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

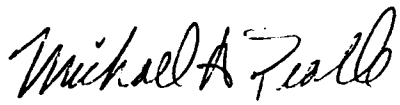
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code

§ 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Michael A.Pearle
Assistant Attorney General
Open Records Division

MAP/jh

Ref: ID# 184337

Enc: Submitted documents

c: Mr. Ronald G. Hole
Hole & Alvarez, LLP
612 W. Nolana
Suite 370
McAllen, Texas 78504
(w/o enclosures)

Ms. Charlotte Magruder
4913 Firestone Drive
College Station, Texas 77845
(w/o enclosures)