



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 17, 2004

Mr. Scott A. Kelly  
Deputy General Counsel  
The Texas A&M University System  
Office of General Counsel  
A&M System Building, Suite 2079  
200 Technology Way  
College Station, Texas 77845-3424

OR2004-10711

Dear Mr. Kelly:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 215604.

Texas A&M University (the "university") received a request for thirteen categories of information related to the Hensel Terrace Apartments on Hensel Drive in College Station. You claim that the requested 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 information.

Initially, you note that some of the information responsive to this request is the identical information that was the subject of two previous rulings from this office. In Open Records Letter Nos. 2004-8592 (2004) and 2004-9292 (2004), the university received requests for information regarding the Hensel Terrace Apartments. We concluded that the university may withhold the information submitted in those instances under section 552.108 of the Government Code. Therefore, assuming that the four criteria for a "previous determination" established by this office in Open Records Decision No. 673 (2001) have been met, we conclude that the university may continue to rely on our decision in Open Records Letter Nos. 2004-8592 and 2004-9292 with respect to the information requested in this instance that

was previously ruled upon in those decisions.<sup>1</sup> *See* Gov't Code § 552.301(f); Open Records Decision No. 673 (2001).

We now turn to your arguments for the information you have submitted that is not encompassed by the prior rulings. Upon review we find that a portion of the submitted information is made expressly public by section 552.022 of the Government Code, which provides in pertinent part:

(a) Without limiting the amount or kind of information that is public information under this chapter, the 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;

....

(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). In this instance, the submitted information includes completed reports made of, for, or by the university. The completed reports must be released under section 552.022(a)(1) unless they are expressly confidential under other law or excepted from disclosure under section 552.108. The submitted information also includes invoices that relate to the receipt or expenditure of public or other funds by the university. The invoices must be released under section 552.022(a)(3) unless they are expressly confidential under other law. Section 552.103 is a discretionary exception under the Public Information Act (the "Act") and does not constitute "other law" for purposes of section 552.022. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (stating that governmental body may waive section 552.103), Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions in

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<sup>1</sup> The four criteria for this type of "previous determination" are 1) the records or information at issue are precisely the same records or information that were previously submitted to this office pursuant to section 552.301(e)(1)(D) of the Government Code; 2) the governmental body which received the request for the records or information is the same governmental body that previously requested and received a ruling from the attorney general; 3) the attorney general's prior ruling concluded that the precise records or information are or are not excepted from disclosure under the Public Information Act (the "Act"); and 4) the law, facts, and circumstances on which the prior attorney general ruling was based have not changed since the issuance of the ruling. *See* Open Records Decision No. 673 (2001).

general). Thus the university may not withhold the completed reports or the invoices under section 552.103 of the Government Code. Section 552.108 of the Government Code is not a confidentiality provision. Thus, the invoices subject to subsection 552.022(a)(3), which we have marked, cannot be withheld under section 552.108. As the university claims no other exceptions for this information, it must be released. However, we will address your section 552.108 claim with respect to the remainder of the submitted information, including the information subject to subsection 552.022(a)(1).

On behalf of the district attorney, you assert that the remaining submitted information is excepted from disclosure under section 552.108 of the Government Code. Section 552.108(a)(1) generally excepts information held by a law enforcement agency 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. *See Gov't Code §§ 552.108(a)(1)*. A governmental body that claims information is excepted from disclosure under section 552.108 must reasonably explain how and why section 552.108 is applicable to the information. *See Gov't Code §§ 552.108(a)(1), .301(e)(1)(A); see also Ex parte Pruitt, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986)*. By its terms, section 552.108 applies only to a law enforcement agency or a prosecutor. This office has concluded, however, that where an incident involving alleged criminal conduct is still under active investigation or prosecution, section 552.108 may be invoked by any proper custodian of information that relates to the incident. *See Open Records Decision Nos. 474 (1987), 372 (1983)*. Where a non-law enforcement agency is in the custody of 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 entity that it wishes to withhold the information.

You explain that the district attorney objects to the release of the remaining submitted information because it relates to a pending criminal investigation. You have also submitted a letter from the district attorney confirming that criminal investigations are being conducted and requesting that the information at issue not be released. Based upon these representations and our review, we conclude that the release the remaining information 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), 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). Thus, the university may withhold this information under section 552.108(a)(1) of the Government Code.

In summary, to the extent that the documents at issue here are precisely the same records that we addressed in Open Records Letter Nos. 2004-8592 and 2004-9292, we conclude that the university may continue to rely on those letter rulings as previous determinations. The university must release the information subject to subsection 552.022(a)(3), which we have

marked, to the requestor. The university may withhold the remaining responsive information at issue 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).

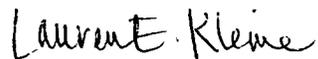
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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,



Lauren E. Kleine  
Assistant Attorney General  
Open Records Division

LEK/jev

Ref: ID# 215604

Enc. Submitted documents

c: Mr. Mark I. Hefter  
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(w/o enclosures)