



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 30, 2006

Ms. Carol Longoria
Office of the General Counsel
The University of Texas System
201 West Seventh Street
Austin, Texas 78701-2902

OR2006-10083

Dear Ms. Longoria:

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# 258084.

The University of Texas at San Antonio (the "university") received a request for a specified surveillance video. You claim that the requested information is excepted from disclosure under sections 552.108 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, you inform us that the requested information was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2006-04799 (2006). In Open Records Letter No. 2006-04799, this office determined the submitted information was excepted from disclosure pursuant to section 552.108(a)(1). We note that relevant facts and circumstances have changed since the issuance of our previous ruling. In the previous request, the university asserted that the requested information was excepted from disclosure because an investigation of the case by the Windcrest Police Department (the "department") was pending. However, you now state that "[t]he [u]niversity can neither confirm nor deny that the [department's] investigation has closed because we have no current status from that department." Therefore, as relevant facts have changed since the issuance of Open Records Letter No. 2006-04799, we conclude that the university may not rely on that ruling as a previous determination. *See* Open Records Decision No. 673 (2001). However, we will consider the arguments against disclosure that you raise in response to the present request.

Section 552.108 of the Government Code provides in relevant part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime;

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication;

...

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from the requirements of Section 552.021 if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution;

(2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication[.]

Gov't Code § 552.108(a)(1)-(2), (b)(1)-(2). A governmental body claiming subsection 552.108(a)(2) or 552.108(b)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. You state that the submitted information pertains to a University of Texas Police Department case that concluded in a result other than conviction or deferred adjudication. Therefore, the university may withhold the submitted information under section 552.108(a)(2). We note that you have the discretion to release all or part of the submitted information that is not otherwise confidential by law. Gov't Code § 552.007.

We note that you ask this office to issue the University of Texas System (the "system") a previous determination allowing the system to withhold Texas driver's license numbers, Texas license plate numbers, Texas vehicle identification numbers, and copies of Texas driver's licenses under section 552.130 of the Government Code without the necessity of requesting an attorney general opinion. We decline to issue a previous determination to the system at this time. Accordingly, this letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us and may 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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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 Office of the Attorney General 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. 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,



L. Joseph James
Assistant Attorney General
Open Records Division

LJJ/dh

Ref: ID# 258084

Enc. Submitted documents

c: Mr. James Muñoz
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(w/o enclosures)