



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 3, 2009

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

OR2009-01382

Dear Ms. Chatterjee:

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# 334084 (Office of the General Counsel Request # 115554).

The University of Texas at Tyler (the "university") received a request for information pertaining to the suspension of the requestor's client. You state that a portion of the requested information has been released to the requestor. You state that requested lab results, drawings, diagrams, and audio recordings do not exist.<sup>1</sup> You claim that the submitted university police records are excepted from disclosure under sections 552.108, 552.130, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed 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[.]" Gov't Code § 552.108(a)(1). Generally, 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). You inform us that university police department report numbers 08-00137 and 08-00151 relate to open and pending criminal prosecutions. Based upon your representations and our review, we find that section 552.108(a)(1) is generally applicable to the information you have marked in report numbers 08-00137 and 08-00151. *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*

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<sup>1</sup>The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dism'd); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

*n.r.e.*, 536 S.W.2d 559 (Tex. 1976) (per curiam) (court delineates law enforcement interests that are present in active cases).

Section 552.108(a)(2) excepts from disclosure information concerning an investigation that did not result in conviction or deferred adjudication. *See* Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(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. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that report number 08-00129 pertains to a criminal investigation by the university police department that has been concluded and that did not result in conviction or deferred adjudication. Based on your representation and our review, we find that section 552.108(a)(2) is generally applicable to the information you have marked in report number 08-00129.

We note, and you acknowledge, that 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). Such basic information refers to the information held to be public in *Houston Chronicle*, and includes the social security number of the arrestee, as well as a detailed description of the offense. *See* 531 S.W.2d at 186-87; Open Records Decision No. 127 (summarizing types of information considered to be basic information). You indicate that you will withhold the arrestees' social security numbers in the submitted reports under section 552.147 of the Government Code.<sup>2</sup> In this instance, however, the requestor is the attorney for an arrestee listed in two of the submitted police reports. Thus, the requestor, as his client's authorized representative, has a right of access to his client's social security number. *See generally* Gov't Code § 552.023(b) (governmental body may not deny access to person to whom information relates, or that person's representative, solely on grounds that information is considered confidential by privacy principles). However, the university may withhold the remaining social security numbers of arrestees under section 552.147.

We also note that you have marked the entire narrative portions of the submitted police reports as information you seek to withhold under section 552.108. However, the remaining portions of the reports do not contain information sufficient to satisfy the requirement that a "detailed description of the offense" be released as basic information. *See* ORD 127. Accordingly, we determine that the university must release a sufficient portion of the narrative sections of the submitted police reports to encompass detailed descriptions of the offenses to satisfy the required release of basic information pursuant to *Houston Chronicle*. The university may withhold the remaining information you have marked in report

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<sup>2</sup>We note that the university may generally withhold a living person's social security number without seeking a ruling from this office under section 552.147 of the Government Code. Gov't Code § 552.147.

numbers 08-00151 and 08-00137 under section 552.108(a)(1) and the remaining information you have marked in report number 08-00129 under section 552.108(a)(2).<sup>3</sup>

Next, you have marked Texas driver's license numbers in the remaining information under section 552.130 of the Government Code. Section 552.130 provides that information relating to a motor vehicle operator's license or driver's license issued by a Texas agency is excepted from public release. Gov't Code § 552.130(a)(1). We note that section 552.130 of the Government Code does not apply to out-of-state motor vehicle information. We also note that section 552.130 protects personal privacy. Thus, the requestor, as the authorized representative of his client, has a right of access to his client's driver's license information under section 552.023, and it may not be withheld under section 552.130. *See generally id.* § 552.023(b) (governmental body may not deny access to person to whom information relates, or that person's representative, solely on grounds that information is considered confidential by privacy principles). The university must withhold the remaining Texas driver's license numbers you have marked in the submitted reports under section 552.130 of the Government Code. However, the university may not withhold the out-of-state driver's license number you have marked under section 552.130. As you raise no further exceptions against its disclosure, we have marked the out-of-state driver's license for release.

Next, we note that the remaining information in report 08-00137 contains information that is confidential under section 552.101 of the Government Code.<sup>4</sup> Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. This section encompasses information protected by other statutes. Criminal history record information ("CHRI") generated by the National Crime Information Center or by the Texas Crime Information Center is confidential. Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* Section 411.083 of the Government Code deems confidential CHRI that the Texas Department of Public Safety ("DPS") maintains, except that the DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See* Gov't Code § 411.083. Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090 - .127. Thus, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of

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<sup>3</sup>As our ruling is dispositive, we need not address your remaining arguments against the disclosure of the information you have marked under section 552.108.

<sup>4</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

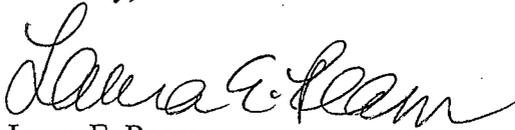
the Government Code in conjunction with Government Code chapter 411, subchapter F. *See id* § 411.082(2)(B) (term CHRI does not include driving record information). A portion of the remaining information in report number 08-00137 constitutes CHRI. We have marked the information the university must withhold pursuant to section 552.101 in conjunction with chapter 411 of the Government Code.

In summary, with the exception of basic information which must include a detailed description of the offense, the university may withhold the information you have marked in the submitted reports under section 552.108 of the Government Code. The university may withhold the social security numbers of the offenders who are not represented by the requestor under section 552.147 of the Government Code. Except for the information we have marked for release, the university may withhold the information you have marked under section 552.130 of the Government Code. The university must withhold the information we have marked under section 552.101 of the Government Code in conjunction with chapter 411 of the Government Code. The remaining information must be released to the requestor.<sup>5</sup>

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 at (512) 475-2497.

Sincerely,



Laura E. Ream  
Assistant Attorney General  
Open Records Division

LER/jb

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<sup>5</sup>We note that the requestor has a special right of access to some of the information being released in this instance. *See* Gov't Code § 552.023(a). Because such information may be confidential with respect to the general public, if the university receives another request for this information from a different requestor, the university must again seek a ruling from this office.

Ref: ID# 334084

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)