



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 17, 2009

Ms. Tammye Curtis-Jones
Associate General Counsel
Texas Southern University
3100 Cleburne Avenue
Houston, Texas 77004

OR2009-05107

Dear Ms. Curtis-Jones:

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# 340236.

Texas Southern University (the "university") received a request for all documentation to include telephone conversations, e-mails, video tapes, written documentation, and financial records used to determine the subsequent cause of the requestor's termination from the university. You state that you will release a portion of the requested information to the requestor. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.107, 552.108, 552.116, 552.117, and 552.136 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we must address the university's obligations under section 552.301 of the Government Code, which prescribes the procedures that a governmental body must follow in asking this office to decide whether information is excepted from public disclosure. Pursuant to section 552.301(b) of the Government Code, a governmental body must ask for the attorney general's decision and state the exceptions that apply within ten business days after receiving the request. *See* Gov't Code § 552.301(a), (b). The university received the instant request for information on January 28, 2009. Although you timely raised sections 552.101, 552.107, 552.116, 552.117, and 552.136 of the Government Code, you did not raise section 552.108 until February 18, 2009. Violations of section 552.301 result in the waiver of any discretionary exceptions not timely asserted by a governmental body. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions). Section 552.108 is discretionary in nature and serves only to protect a governmental body's interests. By failing to timely raise section 552.108, the university has waived its claim under this exception. *See* Open Records Decision No. 177 (1977) (statutory predecessor to section 552.108 subject to waiver).

Next, we note that a portion of the submitted information is subject to section 552.022 of the Government Code. Section 552.022 provides in relevant part:

(a) 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[.]

Gov't Code § 552.022(a)(1). The submitted information includes a completed investigation report and a completed police report. These reports must be released under section 552.022(a)(1), unless they are excepted from disclosure under section 552.108 or expressly confidential under other law. You claim that the submitted investigation report and police report are excepted from disclosure under section 552.116 of the Government Code. However, section 552.116 is a discretionary exception that protects a governmental body's interest and may be waived. *See* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). As such, section 552.116 is not other law that makes information confidential for the purposes of section 552.022. Thus, you may not withhold any of the information subject to section 552.022(a)(1) on this basis. However, because sections 552.101 and 552.136 are other law for purposes of section 552.022, we will consider your arguments for these reports under these exceptions.

Section 552.101 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. You claim that the information at issue is confidential under section 552.101 in conjunction with section 2102.003 of the Government Code and section 321.0136 of the Government Code. Section 2102.003 provides that the internal audit departments of state agencies have authority to conduct audits in relation to matters involving finance, compliance, effectiveness, economy, efficiency, as well as investigations as described by section 321.0136 of the Texas Government Code. Gov't Code § 2102.003. Section 321.0136 defines an investigation as "... an inquiry into specified acts or allegations of impropriety, malfeasance, or nonfeasance in the obligation, expenditure, receipt, or use of state funds, or into specified financial transactions or practices that may involve such impropriety, malfeasance or nonfeasance." *Id.* § 321.0136. In general, section 552.101 only excepts information from disclosure where the express language of a statute makes certain information confidential or states that information shall not be released to the public. Open Records Decision No. 478 (1987). The plain language of sections 2102.003 and 321.0136 do not expressly make information confidential. Because sections 2102.003 and 321.0136 do not expressly make information confidential, we conclude that you may not withhold any of the information at issue pursuant to these provisions.

We note that section 552.136 of the Government Code may be applicable to a portion of the police report that is subject to section 552.022.¹ Section 552.136(b) provides that “[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” The university must withhold the account number we have marked under section 552.136. The remaining information that is subject to section 552.022, which we have marked, must be released to the requestor.

You claim that the remaining information is excepted from disclosure under section 552.116 of the Government Code, which provides:

(a) An audit working paper of an audit of the state auditor or the auditor of a state agency, an institution of higher education as defined by Section 61.003, Education Code, a county, a municipality, a school district, or a joint board operating under Section 22.074, Transportation Code, including any audit relating to the criminal history background check of a public school employee, is excepted from the requirements of Section 552.021. If information in an audit working paper is also maintained in another record, that other record is not excepted from the requirements of Section 552.021 by this section.

(b) In this section:

(1) “Audit” means an audit authorized or required by a statute of this state or the United States, the charter or an ordinance of a municipality, an order of the commissioners court of a county, a resolution or other action of a board of trustees of a school district, including an audit by the district relating to the criminal history background check of a public school employee, or a resolution or other action of a joint board described by Subsection (a) and includes an investigation.

(2) “Audit working paper” includes all information, documentary or otherwise, prepared or maintained in conducting an audit or preparing an audit report, including:

(A) intra-agency and interagency communications; and

(B) drafts of the audit report or portions of those drafts.

¹The 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).

Gov't Code § 552.116. You state the university is an institution of higher education as defined by section 61.003 of the Education Code. You explain that the submitted documents were created by the university's auditors for purposes of an internal audit investigation into alleged improprieties by the former employee. You state the audit was prepared pursuant to chapter 2102 of the Government Code. *See id.* § 2102.003 (relating to the duties of an internal auditor). You further explain that the audit was authorized under chapter 321 of the Government Code. *See id.* § 321.0136 ("An investigation is an inquiry into specified acts or allegations of impropriety, malfeasance, or nonfeasance in the obligation, expenditure, receipt, or use of state funds, or into specified financial transactions or practices that may involve such impropriety, malfeasance, or nonfeasance."). Based on your representations and our review of the submitted documents, we agree that section 552.116 is applicable in this instance. We therefore conclude that the university may withhold the remaining submitted information pursuant to section 552.116 of the Government Code. As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

In summary, with the exception of the account number we have marked under section 552.136 in the completed police report, the university must release the information we have marked pursuant to section 552.022(a)(1) of the Government Code. The university may withhold the remaining information pursuant to section 552.116 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.

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, 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,



Adam Leiber
Assistant Attorney General
Open Records Division

ACL/jb

Ref: ID# 340236

Enc. Submitted documents

c: Requestor
(w/o enclosures)