



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 22, 2009

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

OR2009-10193

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# 349869.

The University of Texas M. D. Anderson Cancer Center (the "university") received a request for all e-mails or other electronic records of nine named university employees created during a specified time period and pertaining to the requestor. You state the university has provided some of the requested information. You claim the remaining requested information is excepted from disclosure under sections 552.101, 552.103, 552.107, and 552.108 of the Government Code and Rule 192.5 of the Texas Rules of Civil Procedure and Rule 503 of the Texas Rules of Evidence.¹ We have considered your arguments and reviewed the submitted representative sample of information.² We have also received and considered comments

¹Although you also raise section 552.101 of the Government Code in conjunction with, among other things, the attorney-client privilege and the attorney work product privilege, this office has concluded that section 552.101 does not encompass discovery privileges. *See* Open Records Decision Nos. 676 at 1-2 (2002), 575 at 2 (1990).

²We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

submitted by the requestor. *See* Gov't Code § 552.304 (interested party may submit comment stating why information should or should not be released).

Initially, we note that some of the submitted information is not responsive to the instant request. You state that the requestor indicated that she seeks only records pertaining to herself. Based on this representation, we find that the information we have marked, which does not relate to the requestor, is not responsive to this request. This ruling does not address the public availability of any information that is not responsive to the request and the university is not required to release that information in response to the request.

Next, we note a portion of the remaining information, which we have marked, was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2009-09786 (2009). In that decision, this office ruled that the university must release the information at issue, which we have marked. As we have no indication that the law, facts, or circumstances on which the prior ruling was based have changed, the university must continue to rely on Open Records Letter No. 2009-09786 as a previous determination and release the information we have marked at issue in accordance with the prior ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). We will address your arguments against disclosure for the remaining information not subject to the previous determination.

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). A governmental body claiming section 552.108 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 state that the remaining information relates to ongoing criminal investigations conducted by the university's police department. Based on this representation, we conclude that the release of 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. App.—Houston [14th Dist.] 1975), writ ref'd n.r.e., 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). Therefore, we agree that section 552.108(a)(1) is applicable to the remaining information and it may be withheld on that basis.³

³ As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

In summary, the university must continue to rely on Open Records Letter No. 2009-09786 as a previous determination and release the information we marked in accordance with the prior ruling. The university may withhold the remaining responsive information under section 552.108(a)(1) 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,

Jonathan Miles
Assistant Attorney General
Open Records Division

JM/cc

Ref: ID# 349869

Enc. Submitted documents

c: Requestor
(w/o enclosures)