



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 18, 2009

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

OR2009-13209

Dear Mr. Kelly:

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# 355781.

Texas A&M University (the "university") received a request for information pertaining to vehicles towed from parking area 44 on specified dates, information showing all vehicles towed on a specified date by a named individual, and information pertaining to a specific accident. You state that the university has released some of the requested information, including the CRB-3 report and the requestor's client's voluntary statement. You claim that portions of the submitted information are excepted from disclosure under sections 552.103, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, the requestor contends that the university is in violation of the procedural requirements of the Act. Section 552.301 prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Section 552.301(b) requires that a governmental body ask for a decision from this office and state which exceptions apply to the requested information by the tenth business day after receiving the request. *Id.* § 552.301(b). The requestor asserts that the university failed to comply with section 552.301(b) because the university's July 14, 2009, letter to this office did not ask for a decision. The university and the requestor agree that the request was received on June 29, 2009. We note that this office does not count the date the request was received or holidays as business days for the purpose of calculating a governmental body's deadlines under the Act. The university informs this office that it was closed for business on July 3, 2009, in observance of Independence Day. Accordingly, the tenth business day after the receipt of the instant request was July 14, 2009. The university

sent a letter to this office on July 14, 2009, via UPS next day air. The letter states that the university seeks to withhold some of the requested information under sections 552.103 and 552.108. Upon review, we disagree with the requestor's assertion and find that the July 14, 2009, letter to this office was timely and did ask for a decision on whether the requested information could be withheld under the Act. However, while the university raised sections 552.103 and 552.108 within the ten-business-day time period as required by subsection 552.301(b), the university did not raise section 552.130 within the ten-business-day deadline. We note mandatory exceptions to disclosure cannot be waived by a governmental body. *See id.* §§ 552.007, .352; Open Records Decision No. 574 at 3 n.4 (2001) (mandatory exceptions). Because section 552.130 is a mandatory exception, we will consider the university's argument under section 552.130, notwithstanding its violation of section 552.301(b) in raising that exception.

The requestor also asserts the university failed to comply with section 552.301(d), which provides:

(d) A governmental body that requests an attorney general decision must provide to the requestor, not later than the 10th business day after the date of its receipt of the written request for information:

(1) a written statement that the governmental body wishes to withhold the requested information and has asked for an attorney general decision about whether the information is within an exception to public disclosure; and

(2) a copy of the governmental body's written communication to the attorney general asking for the decision or, if the governmental body's written communication to the attorney general discloses the requested information, a redacted copy of that written communication.

Gov't Code § 552.301(d). The requestor contends that the university failed to comply with section 552.301(d) because "the [u]niversity failed to provide a written statement to the requestor." However, as we discussed above, we consider the university's July 14, 2009, letter to be a request to this office for a decision. The submitted information and the requestor's comments reveal that the university sent a copy of that letter to the requestor on the same day. Accordingly, by sending the requestor a copy of the July 14, 2009, letter to the requestor, we find that the university has substantially complied with its requirements under section 552.301(d).

Next, the requestor asserts that the university failed to comply with section 552.301(e-1) because it failed to provide the requestor with a copy of the letter from the Brazos County Attorney's Office (the "county attorney") which the university attached to its July 21, 2009, brief to this office. Section 552.301(e-1) requires a governmental body to send the requestor a copy of the written comments the governmental body submits to this office pursuant to section 552.301(e)(1)(A). *Id.* § 552.301(e-1); *see id.* § 552.301(e)(1)(A) (requiring a

governmental body to submit its written comments stating the reasons why the stated exceptions apply not later than the fifteenth-business-day after the request for information was received). Upon review of the university's July 21, 2009, brief we find that it includes the university's written comments on the stated exceptions and informs the requestor about the content of the county attorney's letter. The submitted information and the requestor's comments reveal that the university sent a copy of its July 21st comments to the requestor. Accordingly, we find, because the university sent the requestor a copy of its written comments explaining why the claimed exceptions apply, the university complied with its requirements under section 552.301(e-1).<sup>1</sup>

The requestor alternatively contends that the university violated section 552.304 because it failed to send him a copy of the county attorney's letter. *See id.* § 552.304 (providing that a person submitting section 552.304(a) comments to the attorney general's office shall send a copy of such comments to the requestor and allowing for redactions if the comments disclose or contain the substance of the information requested). The requestor also implies that the city failed to comply with section 552.221 of the Government Code because he has not yet received the information the university does not seek to withhold. We note that while section 552.302 provides that failure to comply with section 552.301 results in the presumption that the requested information is subject to required public disclosure and must be released, the Act contains no comparable provisions for violations of sections 552.221 and 552.304. *See id.* § 552.302. Thus, even if the university failed to comply with sections 552.221 and 552.304 as the requestor alleges, the university has not waived any of its discretionary or mandatory exceptions. Accordingly, we will consider the university's arguments against disclosure of the submitted information.

Next, the university acknowledges that the submitted information contains a CRB-3 accident report form completed pursuant to chapter 550 of the Transportation Code. *See* Transp. Code § 550.064 (officer's accident report). Section 550.065(b) states that, except as provided by subsection (c), accident reports are privileged and confidential. Section 550.065(c)(4) provides for the release of accident reports to a person who provides two of the following three pieces of information: (1) the date of the accident; (2) the name of any person involved in the accident; and (3) the specific location of the accident. *Id.* § 550.065(c)(4). Under this provision, the Texas Department of Transportation or another governmental entity is required to release a copy of an accident report to a person who provides the agency with two or more of the items of information specified by the statute. *Id.* In this instance, the university acknowledges that the requestor has provided it with all three of the specified items of information. The university states it has provided this information to the requestor, but the requestor informs this office that the university has not

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<sup>1</sup>Regardless, we note that the need of a governmental body, other than the agency that is seeking an open records decision, to withhold information under sections 552.103 and 552.108 of the Government Code can provide a compelling reason for non-disclosure under section 552.302. Open Records Decision Nos. 586 (1991) (claim of another governmental body under statutory predecessor to section 552.108 can provide compelling reason for non-disclosure), 469 (1987) (university may withhold information under section 552.103 predecessor to protect district attorney's interest in anticipated criminal litigation).

released this information to him. Accordingly, if the university has not done so already, it must release the submitted CRB-3 accident report form in its entirety pursuant to chapter 550 of the Transportation Code.

Next, we will address the university's argument under section 552.108 for the remaining information in Exhibit C-3. Section 552.108(a)(1) 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 state, and provide a letter from the county attorney confirming, that the information at issue pertains to a pending criminal investigation and prosecution. Based on your representation and our review of the submitted information, we conclude the release of the information at issue 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., 536 S.W.2d 559 (Tex. 1976) (per curiam) (court delineates law enforcement interests that are present in active cases). Thus, section 552.108(a)(1) is generally applicable to the remaining information in Exhibit C-3. We note, however, that the remaining information in Exhibit C-3 includes information you state is available to the requestor's client at the Student Conflict Resolution Services office (the "SCRS"). Because copies of these documents "were made" available to the suspect, we find that you have failed to demonstrate how the release of these documents will interfere with the detection, investigation, or prosecution of crime. *See* Gov't Code § 552.108(a)(1). Therefore, we find, to the extent the remaining information in Exhibit C-3 has been made available to the suspect at the SCRS, the university may not withhold such documents under section 552.108(a)(1).

As you acknowledge, basic information about an arrested person, an arrest, or a crime is not excepted from disclosure under section 552.108. *Id.* § 552.108(c). Such basic information refers to the information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-8; *see also* Open Records Decision No. 127 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Thus, with the exception of the information you state has been released, any information made available to the requestor's client at the SCRS, and basic information, the university may withhold the remaining information in Exhibit C-3 under section 552.108(a)(1).

Next, we address your argument under section 552.103 for the remaining information, which consists of Exhibit C-2 and the remaining information in Exhibits C-3 and C-4. Section 552.103 provides in relevant part as follows:

- (a) Information is excepted from [required public disclosure] if it is information relating to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party or to which an officer or

employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party.

Gov't Code § 552.103(a). The purpose of section 552.103 is to protect the litigation interests of governmental bodies that are parties to the litigation at issue. *See id.* § 552.103(a); Open Records Decision No. 638 at 2 (1996) (section 552.103 only protects the litigation interests of the governmental body claiming the exception). You inform us the information at issue relates to a pending prosecution by the county attorney. We note that the university is not a party to the criminal proceeding and, therefore, does not have a litigation interest in the matter for purposes of section 552.103. In such a situation, we require an affirmative representation from the governmental body with the litigation interest that the governmental body wants the information at issue withheld from disclosure under section 552.103. You have submitted correspondence from the county attorney that states the information at issue pertains to a pending prosecution. The county attorney states that the release of information related to the criminal prosecution at issue could interfere with the county attorney's prosecution of the criminal case. Based on these representations and our review, we agree litigation was pending as of the date the request was received. We further find the information at issue relates to the pending litigation. Accordingly, the university may withhold Exhibit C-2 and the remaining information in Exhibits C-3 and C-4 pursuant to section 552.103 of the Government Code.

However, once information has been obtained by all parties to the litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). We note that it appears that some or all of Exhibits C-3 and C-4, including letters addressed to the suspect, has been provided to the other party in the litigation. Thus, to the extent any of the information at issue has either been obtained from or provided to the other party in the pending litigation, it is not excepted from disclosure under section 552.103(a), and it must be disclosed. Further, the applicability of section 552.103(a) ends once the litigation has been concluded or is no longer realistically anticipated. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

To the extent that the submitted information is not otherwise excepted, we note that section 552.130 of the Government Code applies to the information we have marked. Section 552.130 provides that information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by a Texas agency is excepted from public release. Gov't Code § 552.130(a)(1), (2). Upon review, we find the university must withhold the Texas-issued motor vehicle record information we have marked under section 552.130 of the Government Code.

In summary, if the university has not already done so, it must release the submitted CRB-3 accident report form pursuant to section 550.065(c)(4) of the Transportation Code. With the exception of the requestor's client's voluntary statement, any information made available to the requestor's client at the SCRS, and basic information, which must be released, the university may withhold the remaining information in Exhibit C-3 under

section 552.108(a)(1) of the Government Code. To the extent any of the information in Exhibit C-2 and the remaining information in Exhibits C-3 and C-4 have not been obtained from or provided to the other party in the pending prosecution, the university may withhold that information on behalf of the county attorney under section 552.103 of the Government Code. To the extent the submitted information is not otherwise excepted, the university must withhold the information we have marked under section 552.130 of the Government Code. The remaining information must be released to the requestor.<sup>2</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, toll free, at (888) 672-6787.

Sincerely,



Laura Ream Lemus  
Assistant Attorney General  
Open Records Division

LRL/jb

Ref: ID# 355781

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>2</sup>We note that the requestor has a special right of access to some of the information being released in this instance. Gov't Code § 552.023 (person or person's authorized representative has a special right of access to records that contain information relating to the person that are protected from public disclosure by laws intended to protect that person's privacy interests). 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.