



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 26, 2010

Ms. Neera Chatterjee
Office of the General Counsel
The University of Texas System
201 West Seventh Street
Austin, Texas 787401-2902

OR2010-04307

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# 373856.

The University of Texas System's Office of the Director of Police ("ODOP") received a request for the complete report of ODOP's investigation into an occurrence on a specified date at the student parking lot of the University of Texas at Brownsville (the "university"). You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

You assert the submitted materials are excepted from disclosure under section 552.108(b)(1) of the Government Code. Section 552.108 of the Government Code provides in relevant part:

(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[.]

Gov't Code § 552.108(b)(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(b)(1), 301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). Section 552.108 may be invoked by the proper custodian of information relating to a pending investigation or prosecution of criminal conduct. *See Open Records Decision No. 474 at 4-5 (1987).*

You state the submitted materials pertain to a completed investigation conducted by ODOP concerning alleged misconduct by the officers who arrested the requestor's client. You assert ODOP's administrative investigation is intertwined with the university's police department's (the "department") ongoing investigation of the underlying alleged crime by the requestor's client. You inform us, and provide a letter from the department's chief of police stating, the department objects to disclosure of the submitted materials because their release would interfere with the department's pending criminal investigation. Section 552.108 is generally not applicable to information relating to an administrative investigation that did not result in a criminal investigation or prosecution. *See Morales v. Ellen*, 840 S.W.2d 519, 525-26 (Tex. Civ. App.—El Paso 1992, writ denied), *Open Records Decision No. 350 at 3-4 (1982)*. In this instance, however, you have explained how release of the administrative investigation records will interfere with the department's investigation and the potential prosecution of a criminal matter. *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. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). Thus, we agree section 552.108(b)(1) is applicable to most of the submitted materials.

However, as you acknowledge, 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, among other things, an identification and description of the complainant. *See* 531 S.W.2d at 186-87; *Open Records Decision No. 127* (summarizing types of information considered to be basic information). In this instance, we find the complainant to be the victim listed in the report. You assert the victim's identifying information is excepted from disclosure under section 552.101 of the Government Code in conjunction with section 51.971 of the Education Code. Accordingly, we will address your argument against disclosure of this information.

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception encompasses information other statutes make confidential. You raise section 552.101 in conjunction with section 51.971 of the Education Code, which provides in part:

(a) In this section:

(1) "Compliance program" means a process to assess and ensure compliance by the officers and employees of an institution of higher education with applicable laws, rules, regulations, and policies, including matters of:

- (A) ethics and standards of conduct;
- (B) financial reporting;
- (C) internal accounting controls; or
- (D) auditing.

...

(c) The following are confidential:

- (1) information that directly or indirectly reveals the identity of an individual who made a report to the compliance program office of an institution of higher education, sought guidance from the office, or participated in an investigation conducted under the compliance program; and
- (2) information that directly or indirectly reveals the identity of an individual as a person who is alleged to have or may have planned, initiated, or participated in activities that are the subject of a report made to the compliance program office of an institution of higher education if, after completing an investigation, the office determines the report to be unsubstantiated or without merit.

(d) Subsection (c) does not apply to information related to an individual who consents to disclosure of the information.

Educ. Code § 51.971. You state the requestor's client filed a complaint with the university alleging the department engaged in false arrest and excessive use of force. You state that in response to the complaint, ODOP carried out an administrative investigation to "assess and ultimately ensure that employees of [the university] complied with relevant laws, rules, regulations and policies," as part of the university's internal compliance process. You further state the allegations were found to be unsubstantiated. We agree the information subject to release pertains to the university's administrative investigation for purposes of section 51.971. *See* Educ. Code § 51.971(a). You state none of the individuals who made the complaint, participated in the investigation, or were alleged to have committed the

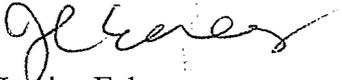
activities that are the subject of the complaint, have consented to release of their identifying information. *See id.* § 51.971(d).

In this instance, the submitted materials reflect the victim listed in the report was a participant in the activities that were the subject of the complaint which was deemed to be unsubstantiated. *See id.* § 51.971(c). Accordingly, we agree the victim's identifying information you marked must be withheld under section 552.101 in conjunction with section 51.971(c) of the Education Code. Therefore, in releasing basic information, ODOP may not release the information you marked under section 552.101 in conjunction with section 51.971 of the Education Code. The remaining basic information must be released.

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, toll free, at (888) 672-6787.

Sincerely,



Jessica Eales
Assistant Attorney General
Open Records Division

JCE/eeg

Ref: ID# 373856

Enc. Submitted documents

c: Requestor
(w/o enclosures)