October 24, 2017

CERTIFIED MAIL, RETURN RECEIPT REQUESTED

The Honorable Ken Paxton
Attorney General of the State of Texas
Open Government Division
P.O. Box 12548, Capitol Station
Austin, Texas 78711-2548

RE: Texas Public Information Act Request
October 10, 2017 and October 11, 2017 Requests
Requestors: Matthew Guariglia and Ashley Ford

Dear General Paxton:

Texas Tech University ("TTU") respectfully requests an Attorney General’s open records decision under the Texas Public Information Act, Tex. Gov’t Code § 552.001, et seq. (the "Act").

On October 10, 2017, the TTU Office of General Counsel received a request from Matthew Guariglia (the "Requestor") for the following information:

- Any reports, including after incident reports filed in regards to the 10/9/2017 event that resulted in the death of an officer.

On October 11, 2017, the TTU Office of General Counsel received a similar request from Ashley Ford (the "Requestor") for the following information:

- I respectfully request the following information: Arrest or incident report taken for Hollis Daniels by university police.

Said requests are attached as Exhibit "A." According to the Act, a governmental body must request an open records decision (ORD) of the Attorney General for exceptions to public disclosure on or before the end of the 10th business day after the date of receiving the written request, which, in this case, would be no later than October 24, 2017, for the first request. The date of receipt is evidenced in the dates of the October 10, 2017 and October 11, 20171 emails (Exhibit "A.").

1 Please note that Texas Tech University’s office hours are Monday through Friday 8:00 a.m. to 5:00 p.m. The request was sent at 5:34 p.m. therefore, it was not received until October 11, 2017.

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TTU has responded to the Requestors that it is seeking an opinion from the Attorney General on those items it claims should be excepted from public disclosure. The responses to the Requestors are attached as Exhibit “B.” As indicated above, this letter includes specific comments explaining why the documents related to the above-mentioned requests are excepted from public disclosure under the Texas Public Information Act. The requested documents are attached as Exhibit “C”.

I. FACTS

The relevant facts are as follows:

1. The Texas Tech University Police Department (TTUPD) is charged with enforcing the law and investigating crimes committed on Texas Tech University’s campus and the surrounding areas.

2. On the evening of October 9, 2017, there was a shooting at the TTUPD station that resulted in an officer being killed.

3. Due to nature of the situation, the Lubbock Police Department (LPD) has taken the case over as the lead investigating agency for this matter.

4. The investigation is still on-going and the case has not been presented to a Grand Jury at this time.

II. RELEVANT EXCEPTIONS

A. TEX. GOV’T CODE § 552.108- Certain Law Enforcement, Corrections, and Prosecutorial Information.

1. **TEX. GOV’T CODE § 552.108(a)(1):** Information relating to a pending criminal investigation or prosecution may be withheld if release of that information would interfere with the detection, investigation, or prosecution of a crime.

2. **TEX. GOV’T CODE § 552.108 (a)(1) applies to records created by an agency, or a portion of an agency, whose primary function is to investigate crime and enforce the criminal laws. Tex. Att’y Gen. ORD-493 (1988). The law enforcement exception applies to records relating to an active investigation where there is a reasonable chance of criminal prosecution. Tex. Att’y Gen. ORD Nos. 474 at 5 (1987); 372 (1983); and 286 (1981). Basic information, including the identity of the complainant, is generally not excepted from disclosure under the provision. 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).**
3. TTUPD is charged with investigating and enforcing laws on the TTU campus and the immediate surrounding area. TTUPD created the enclosed records to investigate a possible crime. These documents and the information contained in these documents are also part of the investigation being conducted by the LPD.

4. The requested information contains evidence in LPD’s pending police investigation. Per both LPD and the Lubbock County Criminal District Attorney’s office, release of this information will hurt the investigation and prosecution of this case as its release could affect the State’s ability to ensure a fair trial and may affect witness testimony. Therefore, the requested information, other than basic information, should remain confidential while this case is still under police investigation and being reviewed for criminal prosecution. *Houston Chronicle Pub ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.-Houston [14th Dist.] 1975).

III. CONCLUSION

For the reasons stated above, TTU requests that the records included for your review in Exhibit “C” be excepted from public disclosure in their entirety under Tex. Gov’t Code §552.108(a)(1) as there is an ongoing investigation. We await your decision regarding this matter and thank you in advance for your kind assistance.

Should you have any questions or need any additional documentation or documents, please do not hesitate to contact me.

Very truly yours,

Ronny H. Wall
Associate General Counsel

Enclosures: Exhibits “A” through “C”

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