Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 15, 1997

Ms. Fancy H. Jezek
Holbrook & Jezek
P.O. Box 2548
Harker Heights, Texas 76548-2548

OR97-1119

Dear Ms. Jezek:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 106115.

The Killeen Independent School District (the "school district") received a request for a copy of an offense report "generated by the police officer of the . . . [s]chool [d]istrict." You claim that the requested information is excepted from disclosure under sections 552.103, 552.108, and 552.114 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

First, you claim that the offense report is deemed a confidential educational record by the Family Educational and Privacy Rights Act (FERPA), 20 U.S.C. § 1232g, and, therefore, that the report is excepted from required public disclosure. You also claim that the report is excepted pursuant to section 552.114 of the Government Code.

FERPA provides that no federal funds shall be made available to any educational agency or institution that has a policy or practice of releasing student's "education records" without the written consent of the student or the student's parents. 20 U.S.C. §§ 1232g(b)(1), 1232g(d). Government Code section 552.026 incorporates by reference these FERPA requirements as follows:

> This chapter does not require the release of information contained in education records of an educational agency or institution, except in conformity with the Family Educational Rights and Privacy Act of 1974, Sec. 513, Pub. L. No. 93-380, 20 U.S.C. Sec. 1232g.

Effective July 23, 1992, FERPA was amended to expressly state: "The term 'education records' does not include -- . . . (ii) records maintained by a law enforcement unit of the educational agency or institution that were created by that law enforcement unit for

the purpose of law enforcement." Higher Education Amendments of 1992, Pub. L. No. 102-325, tit. XV, pt. H, § 1555(a), 106 Stat. 448 (July 23, 1992) (codified at 20 U.S.C. § 1232g(a)(4)(B)(ii)). On the basis of this amendment, we have previously concluded that the incident and arrest reports of state university campus police departments are not education records for the purposes of FERPA; and such records are not excepted from required public disclosure by sections 552.026 and 552.101. Open Records Decision No. 612 (1992). Likewise we conclude that, here, the requested offense report generated by the school district's police department is not an education record for the purposes of FERPA and is not excepted from disclosure by section 552.026.

You also claim that the requested report is excepted by section 552.114 which excepts from required public disclosure "a student record at an educational institution funded wholly or partly by state revenue." We conclude that a school district's police department offense report is not a "student record" within the meaning of section 552.114. *See* Open Records Decision No. 612 (1992) (university campus police department arrest and offense records are not "student records" within the meaning of the predecessor to section 552.114).

The exception for student records in section 552.114 was included in the Open Records Act to exclude from required public disclosure confidential information contained in student records. *See* Comments, *The Texas Open Records Act: A Section-By-Section Analysis*, 14-1 HOUS. L. REV. 398, 420 n.184 (1977). In Attorney General Opinion H-447 (1974) at 2, this office defined "student record" for the purposes of section 552.114 as follows:

> [I]t is our opinion that a "student record" would generally include information concerning the student himself and his individual relationship to the educational institution. A list of student records would include, but not necessarily be limited to, the following: applications for admission; standardized achievement test scores, attendance data, scores on standardized intelligence, aptitude, and psychological tests, interest inventory results, health data, family background information, teacher or counselor ratings and observations, and reports of behavioral patterns or disciplinary actions.

A school district's police offense report does not fit within any of these accepted categories of "student records." Such a report does not generally reflect on the student's academic relationship to the educational institution or other regular extra-curricular activities associated with attendance at an educational institution. *See* Open Records Decision No. 612 (1992). Thus, you may not withhold the requested offense report pursuant to section 552.114.

Next, you contend the information is excepted from disclosure under section 552.108 which excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime," and "[a]n 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." Gov't Code § 552.108; *see Holmes v. Morales*, 924 S.W.2d 920 (Tex. 1996). We note, however, that information normally found on the front page of an offense report or an arrest report is generally considered public.[1] *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); Open Records Decision No. 127 (1976). The requested report relates to the detection, investigation, or prosecution of crime. We therefore conclude that, except for front page offense report information, section 552.108 of the Government Code excepts the requested report from required public disclosure.[2] You may choose to release all or part of the requested information that is not otherwise confidential by law. Gov't Code § 552.007.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,

Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/rho

Ref.: ID# 106115

Enclosures: Submitted documents

cc: Mr. Charley Harrist
Killeen Daily Herald
P.O. Box 1300
Killeen, Texas 76540
(w/o enclosures)

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[1]The content of the information determines whether it must be released in compliance with *Houston Chronicle*, not its literal location on the first page of an offense report. Open Records Decision No. 127 (1976) contains a summary of the types of information deemed public by *Houston Chronicle.*

[2]Section 552.103(a) does not except front page offense report information from public disclosure. *See* Open Records Decision No. 362 (1983).