Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 27, 1997

Ms. Stacy C. Ferguson
Schulman, Walheim & Heidelberg, Inc.
112 East Pecan, Suite 3000
San Antonio, Texas 78205

OR97-1477

Dear Ms. Ferguson:

On behalf of the San Antonio Independent School District ("SAISD"), you ask whether certain information is subject to required public disclosure under the Open Records Act (the "act"), chapter 552 of the Government Code. Your request was assigned ID# 107434.

SAISD received a request for "information on the following cases: SAISD Case #9510-1820, #9601-1652 and #9610-0974" as well as "all handwritten or typed statements submitted to the department relating to these cases." You assert that the requested information is excepted from required public disclosure based on sections 552.026, 552.101, 552.102, 552.108 and 552.114 of the Government Code. As responsive to this request, you submitted to this office records of the SAISD Police Department.

Section 552.026 of the Government Code incorporates into the act the Family Educational Rights and Privacy Act of 1974 ("FERPA"), 20 U.S.C. § 1232g, a federal law that concerns the availability of student records held by educational agencies or institutions that receive federal funds under programs administered by the federal government. Section 552.114 of the Government Code is an exception in the act that generally applies to student records at an institution funded wholly or partly by state revenue. Prior decisions of this office consider the term "student record" in section 552.114 to be the equivalent of "education records" in FERPA. *See* Open Records Decision No 634 (1995) at 5.

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." 20 U.S.C. § 1232g(a)(4)(B)(ii). This office has ruled that

records maintained by an educational institution's police department are not education records for purposes of FERPA and section 552.114. *See* Open Records Decision No. 612 (1992). Consequently, we conclude that the requested information, including the names of students, are not education records under FERPA or section 552.114.

Section 552.101 excepts from required public disclosure information considered to be confidential by law, including information made confidential by judicial decision. This exception applies to information made confidential by the common-law right to privacy. *Indus. Found. of the S. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Information may be withheld under section 552.101 in conjunction with the common-law right to privacy if the information contains highly intimate or embarrassing facts about a person's private affairs such that its release would be highly objectionable to a reasonable person and if the information is of no legitimate concern to the public. *See id.* Section 552.102(a) of the Government Code excepts from public disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." The test to be applied to information claimed to be protected under section 552.102 is the same test formulated by the Texas Supreme Court in *Industrial Foundation of the South v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977) for information claimed to be protected under the doctrine of common-law privacy as incorporated by section 552.101. *See Hubert v. Harte-Hanks Texas Newspapers*, 652 S.W.2d 546 (Tex. App.--Austin 1983, writ ref'd n.r.e.). Applying the *Industrial Foundation* test, we conclude that the information is not protected from public disclosure under section 552.101 or section 552.102.

Section 552.108 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," 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). Information normally found on the front page of an offense report is generally considered public. *Houston Chronicle Publishing 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). We believe the three offense reports are "[i]nformation held by a law enforcement agency or prosecutor that deals with 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 offense reports from required public disclosure. However, we do not believe section 552.108 applies to the material relating to the investigations of Officer Albrecht and Patrolman Catts. Section 552.108 generally is not applicable to information relating to allegations of officer misconduct when no criminal investigation or prosecution of the officer results from the investigation. *See Morales v. Ellen,* 840 S.W.2d 519 (Tex. App.--El Paso 1992, writ denied); Open Records Decision No. 350 (1982).

One of the reports, Offense Report No. 9510-1820, concerns an offense committed by a juvenile before January 1, 1996. The release of law enforcement records of offenses committed by a juvenile before January 1, 1996, is governed by former Family Code section 51.14(d),[1] which provides, in pertinent part:

> (d) Except as provided by Article 15.27, Code of Criminal Procedure, and except for files and records relating to a charge for which a child is transferred under Section 54.02 of this code to a criminal court for prosecution, the law-enforcement files and records [concerning a child] are not open to public inspection nor may their contents be disclosed to the public.[2]

In Open Records Decision No. 181 (1977) at 2, this office held that former section 51.14(d) excepts police reports which identify juveniles or furnish a basis for their identification. *See also* Open Records Decision No. 394 (1983) at 4-5 (applying former Fam. Code § 51.14(d) to "police blotter" and related information). You do not indicate that the information at issue here relates to charges for which SAISD transferred the juvenile under section 54.02 of the Family Code[3] to a criminal court for prosecution, nor that article 15.27 of the Code of Criminal Procedure[4] applies. Moreover, we do not understand any of the exceptions to former section 51.14(d) to apply here.[5] Section 552.101 of the Government Code excepts from required public disclosure information made confidential by law, including information made confidential by statute. Accordingly, we conclude that SAISD must withhold Offense Report 9510-1820 in its entirety from the requestor under Government Code section 552.101 as information deemed confidential by statutory law.[6]

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[1]The Family Code was substantially amended by the Seventy-fourth Legislature including the repeal of section 51.14. Act of May 27, 1995, 74th Leg., R.S., ch. 262, § 100, 1995 Tex. Sess. Law Serv. 2517, 2590. However, the amendments to the Family Code apply only to conduct that occurs on or after January 1, 1996. *Id.* § 106, 1995 Tex. Sess. Law Serv. at 2591. "Conduct that occurs before January 1, 1996, is governed by the law in effect at the time the conduct occurred, and that law is continued in effect for that purpose." *Id.*

[2]Act of May 22, 1993, 73d Leg., R.S., ch 461, § 3, 1993 Tex. Gen. Laws 1850, 1852, *repealed by* Act of May 27, 1995, 74th Leg., R.S., ch. 262, § 100, 1995 Tex. Sess. Law Serv. 2517, 2590.

[3]Act of May 25, 1973, 63d Leg., R.S., ch. 544, § 1, 1973 Tex. Gen. Laws 1460, 1476-77, *amended by* Act of May 19, 1975, 64th Leg., R.S., ch. 693, §§ 15-16, 1975 Tex. Gen Laws 2152, 2156-57 (adding subsecs. (m), (j), (k)), *amended by* Act of May 8, 1987, 70th Leg., R.S., ch. 140, §§ 1-3, 1987 Tex. Gen. Laws 309 (amending subsecs. (a), (h), (j)).

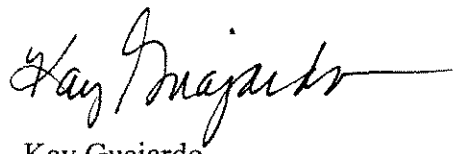
[4]Act of May 22, 1993, 73d Leg., R.S., ch. 461, § 1, 1993 Tex. Gen. Laws 1850-51.

[5]*See id.* § 3, 1993 Tex. Gen. Laws at 1852 (repealed 1995) (former Fam. Code § 51.14(d)(1), (2)).

[6]This office has ruled that section 58.007 of the Family Code does not make confidential juvenile law enforcement records concerning conduct occurring on or after January 1, 1996, that are maintained by law enforcement agencies. *See* Open Records Decision No. 644 (1996).

We are resolving this matter with this 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 may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Kay Guajardo
Assistant Attorney General
Open Records Division

KHG/rho

Ref.: ID# 107434

Enclosures: Submitted documents

cc: Mr. Darryl D. Thomas
Field Representative
American Federation of Teachers
1401 North Main Avenue
San Antonio, Texas 78212-4306
(w/o enclosures)