ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 23, 2006

Ms. Susan K. Bohn
Bracewell & Giuliani, L.L.P.
111 Congress Avenue, Suite 2300
Austin, Texas 78701-4061

OR2006-01777

Dear Ms. Bohn:

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# 242789.

The Spring Independent School District (the "district"), which you represent, received a request for information related to the investigation of an injury sustained by a named employee. You state that some responsive information has been released with student-identifying information redacted pursuant to the Family Educational Rights and Privacy Act ("FERPA") in accordance with Open Records Decision No. 634 (1995).[1] You claim that some of the requested information is excepted from disclosure under sections 552.108 and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

You contend that portions of the submitted information are excepted from disclosure under section 552.108 of the Government Code, which provides in relevant part:

> (a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:
>
> > (1) release of the information would interfere with the detection, investigation or prosecution of crime[.]

[1]In Open Records Decision No. 634, this office concluded that an educational agency or institution may withhold from public disclosure information that is protected by FERPA and excepted from required public disclosure by sections 552.026 and 552.101without the necessity of requesting an attorney general decision as to those exceptions.

> (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:
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> > (1) release of the internal record or notation would interfere with law enforcement or prosecution[.]

Gov't Code § 552.108(a)(1), (b)(1). A governmental body that raises section 552.108 must reasonably explain how and why section 552.108 is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986). You assert that release of the information that you have marked "would reveal the investigative techniques of the police officer involved . . . and would interfere with . . . protecting the safety of the students and staff members . . . ." However, you have not stated that the information at issue pertains to an ongoing criminal investigation or prosecution, nor have you explained how its release would interfere in some way with the detection, investigation, or prosecution of crime. Thus, you have not met your burden under section 552.108(a)(1) or 552.108(b)(1). Thus, we find that the district has not shown, and we are unable to discern, how release of the submitted information would interfere with law enforcement or crime prevention. *See* Gov't Code § 552.108(a)(1), (b)(1); Open Records Decision No. 508 at 4 (1988) (governmental body must demonstrate how release of particular information at issue would interfere with law enforcement efforts, unless information does so on its face). Thus, you have failed to demonstrate the applicability of section 552.108 to the submitted information. Therefore, no portion of the submitted information may be withheld on this basis.

Finally, you assert that a social security number contained in the submitted information is excepted under section 552.147 of the Government Code. This section provides that "[t]he social security number of a living person is excepted from" required public disclosure under the Act. Therefore, the district must withhold the social security number contained in the submitted information under section 552.147.[2] The remaining submitted information must be released to the requestor.[3]

This letter ruling is limited to the particular records 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 records or any other circumstances.

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[2]We note that section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act.

[3]Some of the documents marked for release contain or consist of confidential information that is not subject to release to the general public. *See* Gov't Code § 552.352. However, the requestor in this instance has a special right of access to the information. *Id.* § 552.023. Because some of the information is confidential with respect to the general public, if the district receives a future request for this information from an individual other than the person to whom the information relates or the person's authorized representative, the district should again seek our decision.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

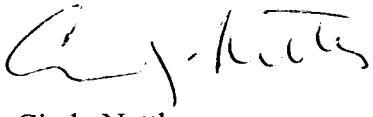
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Office of the Attorney General at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/er

Ref: ID# 242789

Enc. Submitted documents

c: Ms. Wanda J. Harris
Cy-Fair Federation of Teachers/TFT
17461-A Village Green Drive
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(w/o enclosures)