



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 17, 2006

Ms. Sue M. Lee  
Henslee Fowler Hepworth & Schwartz L.L.P.  
816 Congress Avenue, Suite 800  
Austin, Texas 78701

OR2005-05127

Dear Ms. Lee:

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# 249353.

The Alief Independent School District (the "district"), which you represent, received a request for "[a]ny and all documents related to incidents investigated by campus/district police at Hastings and Elsie High Schools for the school years 2004-05 and 2005-06." You claim that the requested information is excepted from disclosure pursuant to sections 552.101, 552.103, 552.108, 552.114, 552.117, and 552.135 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>1</sup>

Initially, we note that you have redacted information from the submitted information. A governmental body that seeks to withhold requested information from the public must ask this office for a decision under section 552.301 of the Government Code, unless the information is the subject of a previous determination under section 552.301. *See Gov't Code §§ 552.301(a), .302; Open Records Decision No. 673 (2001).* Pursuant to section 552.147(b) of the Government Code, all governmental bodies may redact social security numbers without the necessity of requesting a decision from this office. *See Gov't*

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<sup>1</sup>We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See Open Records Decision Nos. 499 (1988), 497 (1988).* This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Code § 552.147(b). Accordingly, the district may withhold social security numbers without seeking a decision from this office. However, you do not indicate, and this office is not otherwise informed, that the remaining redacted information is the subject of a previous determination. Because we are generally able in this instance to discern the nature of the redacted information, we will determine whether it is excepted from public disclosure. In the future, however, you should refrain from redacting any information that you submit to this office in seeking an open records ruling. *See* Gov't Code §§ 552.301(e)(1)(D), .302.

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." This exception encompasses the Family Educational Rights and Privacy Act of 1974 ("FERPA"), section 1232g of title 20 of the United States Code. Section 552.026 of the Government Code incorporates FERPA into the Act. *See* Gov't Code § 552.026 (Act does not require release of information contained in education records of educational agency or institution, except in conformity with FERPA).

FERPA provides that no federal funds will be made available under any applicable program to an educational agency or institution that releases personally identifiable information, other than directory information, contained in a student's education records to anyone but certain enumerated federal, state, and local officials and institutions, unless otherwise authorized by the student's parent. *See* 20 U.S.C. § 1232g(b)(1); *see also* 34 C.F.R. § 99.3 (defining personally identifiable information); Open Records Decision No. 224 (1979) (release of document in student's handwriting would make student's identity easily traceable). "Education records" under FERPA are those records that contain information directly related to a student and that are maintained by an educational agency or institution or by a person acting for such agency or institution. *See* 20 U.S.C. § 1232g(a)(4)(A). However, the definition of "education records" under FERPA does not include "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." *See* 20 U.S.C. § 1232g(a)(4)(B)(ii).

Section 552.114 of the Government Code excepts from public disclosure "information in a student record at an educational institution funded wholly or partly by state revenue." Gov't Code § 552.114(a). This office generally has treated "student record" information under section 552.114(a) as the equivalent of "education record" information that is protected by FERPA. *See* Open Records Decision No. 634 at 5 (1995).<sup>2</sup>

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<sup>2</sup>In Open Records Decision No. 634 (1995), this office concluded that (1) an educational agency or institution may withhold from the public information that is protected by FERPA and excepted from required public disclosure under sections 552.026 and 552.101 of the Government Code without the necessity of requesting an attorney general decision as to those exceptions; and (2) a state-funded educational agency or institution may withhold from the public information that is excepted from required public disclosure under section 552.114 of the Government Code as a "student record," insofar as the "student record" is protected by FERPA, without the necessity of requesting an attorney general decision as to that exception. *See* Open Records Decision No. 634 at 6-8 (1995).

You assert that the submitted offense reports in Exhibit D identify students of the district. However, we note that the submitted police reports were created by the district's police department, whose primary function is to investigate crimes and enforce criminal laws. These reports were created by a law enforcement unit for a law enforcement purpose. Therefore, the submitted police reports in Exhibit D are not subject to FERPA, and none of this information may be withheld on that basis. *See* 20 U.S.C. § 1232g(a)(4)(B)(ii).

You also raise section 552.101 in conjunction with section 58.007 of the Family Code. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007. The relevant language of section 58.007 reads as follows:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

(1) if maintained on paper or microfilm, kept separate from adult files and records;

(2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and

(3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapter B.

Fam. Code § 58.007(c). Upon review, we find that the submitted offense reports in Exhibit D involve allegations of juvenile conduct that occurred after September 1, 1997. *See* Fam. Code § 51.02(2) (providing that in title 3 of Family Code, "child" means person who is ten years of age or older and under seventeen years of age). Thus, this information is subject to section 58.007, and it does not appear that any of the exceptions in section 58.007 apply. As such, the submitted information in Exhibit D must be withheld under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code.<sup>3</sup> The remaining information at issue, however, does not identify a juvenile suspect or offender. Accordingly, none of the remaining information in Exhibit C may be withheld under section 552.101 in conjunction with section 58.007 of the Family Code.

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<sup>3</sup>As our ruling on this information is dispositive, we do not address your remaining arguments for this information.

You claim that the remaining information found in Exhibit C may be withheld under section 552.103 of the Government Code. Section 552.103 provides as follows:

(a) Information is excepted from [required public disclosure] if it is information relating to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party.

...

(c) Information relating to litigation involving a governmental body or an officer or employee of a governmental body is excepted from disclosure under Subsection (a) only if the litigation is pending or reasonably anticipated on the date that the requestor applies to the officer for public information for access to or duplication of the information.

Gov't Code § 552.103(a), (c). A governmental body has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation was pending or reasonably anticipated on the date the governmental body received the request for information, and (2) the information at issue is related to that litigation. *Univ. of Tex. Law Sch. v. Tex. Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.—Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.—Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). A governmental body must meet both prongs of this test for information to be excepted under section 552.103(a).

In this instance, you have not established that section 552.103(a) is applicable to any portion of the remaining information. Although you state that many of the alleged offenses listed in Exhibit C "may still be in litigation," you have not indicated which particular offense report is currently pending litigation or that the information at issue here is related to that particular litigation. Furthermore, you have not demonstrated that the district is a party to any pending litigation. *See* Gov't Code § 552.301(e) (governmental body must provide comments explaining why exceptions raised should apply to information requested); *see also* Open Records Decision No. 575 at 2 (1990) (stating that the predecessor to section 552.103 is generally only applicable to information related to pending or reasonably anticipated litigation to which the state or political subdivision is a party). Accordingly, we find that you have failed to demonstrate the applicability of section 552.103 to the remaining submitted information, and therefore none of it may be withheld on that basis.

Next, we address your claim under section 552.108. This exception provides in part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime;

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication;

(3) it is information relating to a threat against a peace officer collected or disseminated under Section 411.048; or

...

(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 [required public disclosure] if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution;

(2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication[.]

Gov't Code § 552.108(a)-(b). Section 552.108 protects certain specific types of law enforcement information. Section 552.108(a)(1) is applicable if the release of the information would interfere with a pending criminal investigation or prosecution. *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). Section 552.108(b)(1) protects internal records of a law enforcement agency, the release of which would interfere with law enforcement and crime prevention. *See City of Fort Worth v. Cornyn*, 86 S.W.3d 320, 327 (Tex. App.—Austin 2002, no pet.) (section 552.108(b)(1) protects information that, if released, would permit private citizens to anticipate weaknesses in police department, avoid detection, jeopardize officer safety, and generally undermine police efforts to effectuate state laws). Sections 552.108(a)(2) and 552.108(b)(2) are applicable only if the information at issue relates to a concluded case that did not result in a conviction or a deferred adjudication. Section 552.108(a)(3) is applicable to information collected or disseminated under section 411.048 of the Government Code. A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information that the governmental body seeks to withhold. *See Gov't Code § 552.301(e)(1)(A)*; *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

The remaining information consists of a list of reported incident reports. Upon review, we find that you have failed to meet your burden of explaining how and why release of this list

would interfere with law enforcement and crime prevention, and have failed to demonstrate how or why any aspect of section 552.108 is applicable to any portion of the information at issue. Accordingly, we conclude that the district may not withhold any portion of the submitted information under section 552.108 of the Government Code.

In summary, the information in Exhibit D must be withheld under section 552.101 in conjunction with section 58.007 of the Government Code. The remaining information in Exhibit C must be released to the requestor.

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.

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,



Debbie K. Lee  
Assistant Attorney General  
Open Records Division

DKL/eb

Ref: ID# 249353

Enc. Submitted documents

c: Mr. David Steinhart  
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(w/o enclosures)