



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 7, 2009

Mr. Miles J. LeBlanc
Assistant General Counsel
Houston Independent School District
4400 West 18th Street
Houston, Texas 77092-8501

OR2009-10996

Dear Mr. LeBlanc:

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# 351827.

The Houston Independent School District (the "district") received a request for personnel information regarding a named teacher.¹ You state the district has redacted social security numbers pursuant to section 552.147 of the Government Code. *See* Gov't Code § 552.147(b) (governmental body may redact social security number without necessity of requesting decision from this office under the Act). You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.²

¹You inform us the district requested and received clarification of the request. *See* Gov't Code §552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information).

²We assume 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.

Initially, we note the requestor has agreed to exclude home addresses, family member information, employee appraisals, medical information, and driver's license numbers from his request. Thus, such information is not responsive to the present request for information. The district need not release non-responsive information in response to this request, and this ruling will not address that information.

Next, we note the United States Department of Education Family Policy Compliance Office (the "DOE") has informed this office the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232(a), does not permit state and local educational authorities to disclose to this office, without parental consent, unredacted, personally identifiable information contained in education records for the purpose of our review in the open records ruling process under the Act.³ Consequently, state and local educational authorities that receive a request for education records from a member of the public under the Act must not submit education records to this office in unredacted form, that is, in a form in which "personally identifiable information" is disclosed. *See* 34 C.F.R. § 99.3 (defining "personally identifiable information"). The submitted information includes redacted and unredacted education records. Because our office is prohibited from reviewing these records to determine whether appropriate redactions under FERPA have been made, we will not address the applicability of FERPA to any of the submitted records. Such determinations under FERPA must be made by the educational authority in possession of such records. We will, however, consider the applicability of the claimed exceptions to the submitted information.

Section 552.108(a)(1) excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime[.]" Gov't Code § 552.108(a)(1). A governmental body 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*, 551 S.W.2d 706 (Tex. 1977). Section 552.108 may be invoked by the proper custodian of information relating to an investigation or prosecution of criminal conduct. *See* Open Records Decision Nos. 474 at 4-5 (1987). Where a non-law enforcement agency has custody of information that would otherwise qualify for exception under section 552.108 as information relating to the pending case of a law enforcement agency, the custodian of the records may withhold the information if (1) it demonstrates that the information relates to the pending case, and (2) this office is provided with a representation from the law enforcement entity with the law enforcement interest that the entity wishes to withhold the information. *See generally* Open Records Decision Nos. 474 (1987), 372 (1983). You state although the submitted information is maintained by the district, it relates to a criminal prosecution concerning the named district employee. You have provided this office an affidavit from the Harris County District Attorney's Office

³A copy of this letter may be found on the Office of the Attorney General's website: <http://www.oag.state.tx.us/open/20060725usdoe.pdf>.

(the "district attorney") explaining that the submitted information relates to a pending investigation and prosecution of the teacher at issue. The district attorney represents release of the submitted information would interfere with the ongoing investigation and prosecution. Based on your representations, the submitted affidavit from the district attorney, and our review, we find release of the submitted information would interfere with the detection, investigation, or prosecution of a crime. Therefore, the district may withhold the submitted information under section 552.108(a)(1) of the Government Code. As our ruling is dispositive, we need not address your remaining arguments against disclosure of the submitted information.

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

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Karen E. Stack
Assistant Attorney General
Open Records Division

KES/cc

Ref: ID# 351827

Enc. Submitted documents

c: Requestor
(w/o enclosures)