



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 12, 2013

Ms. Melanie L. Hollmann  
Atkins, Hollmann, Jones, Peacock, Lewis & Lyon  
3800 East 42<sup>nd</sup> Street, Suite 500  
Odessa, Texas 79762

OR2013-04149

Dear Ms. Hollmann:

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# 485064.

The Ector County Independent School District (the "district"), which you represent, received a request for a specified video. You claim the submitted information is subject to the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code. You also claim the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered your arguments and reviewed the submitted information.

You state the submitted information must be withheld pursuant to FERPA. The United States Department of Education Family Policy Compliance Office has informed this office FERPA 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.<sup>1</sup> 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

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<sup>1</sup>A copy of this letter may be found on the attorney general's website, <http://www.oag.state.tx.us/open/20060725usdoe.pdf>.

information”). We note FERPA is not applicable to law enforcement records maintained by the district’s police department for law enforcement purposes. 20 U.S.C. § 1232g(a)(4)(B)(ii); 34 C.F.R. §§ 99.3 (defining “education record”), .8. You have submitted a video for our review. *See* Open Records Decision No. 224 (1979) (student’s handwritten comments protected under FERPA because they would make identity of student easily traceable through handwriting, style of expression, or particular incidents related in the comments). Because this office is prohibited from reviewing an education record for the purpose of determining whether appropriate redactions have been made under FERPA, we will not address the applicability of FERPA to the submitted information. Such determinations under FERPA must be made by the educational authority in possession of the education records.<sup>2</sup> However, we will consider your exception to disclosure of the submitted information under the Act.

Section 552.108 of the Government Code exempts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime [if] release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). A governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). We note 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 No. 372 (1983) (statutory predecessor to section 552.108 may be invoked by any proper custodian of law enforcement information). Thus, where a governmental body 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 it provides this office with a demonstration that the information relates to the pending case and a representation from the law enforcement agency that it wishes to have the information withheld.

You state, and provide an affidavit from the district’s police department confirming, the submitted information relates to a pending criminal case that is under investigation by the district’s police department. Based on these representations and our review, we find the release of the submitted information would interfere with the detection, investigation, or prosecution of crime. *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). Thus, the district may withhold the submitted information under section 552.108(a)(1) of the Government Code.

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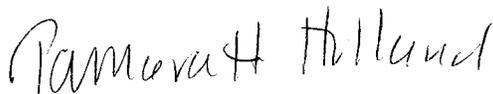
<sup>2</sup>If in the future the district does obtain parental consent to submit unredacted education records and seeks a ruling from this office on the proper redaction of those education records in compliance with FERPA, we will rule accordingly.

In summary, the district may withhold the submitted information under section 552.108(a)(1) of the Government Code. This ruling does not address the applicability of FERPA to the submitted information. Should the district determine that the submitted information consists of "education records" that must be withheld under FERPA, the district must dispose of that information in accordance with FERPA, rather than the Act.

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](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, toll free at (888) 672-6787.

Sincerely,



Tamara H. Holland  
Assistant Attorney General  
Open Records Division

THH/ac

Ref: ID# 485064

Enc. Submitted documents

c: Requestor  
(w/o enclosures)