



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 2, 2014

Ms. Leslie McCollom
Counsel for Edinburg Consolidated Independent School District
O'Hanlon, McCollom & Demerath
808 West Avenue
Austin, Texas 78701

OR2014-07374

Dear Ms. McCollom:

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# 524359.

The Edinburg Consolidated Independent School District (the "district"), which you represent, received two requests for information pertaining to a specified investigation from the same requestor. You state the district has redacted information pursuant to the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code.¹ You claim the submitted information is excepted from disclosure under sections 552.108 and

¹We note the United States Department of Education Family Policy Compliance Office (the "DOE") has informed this office that FERPA does not permit a state educational agency or institution to disclose to this office, without parental or an adult student's consent, unredacted, personally identifiable information contained in education records for the purpose of our review in the open records ruling process under the Act. See 34 C.F.R. § 99.3 (defining "personally identifiable information"). The DOE has determined that FERPA determinations must be made by the educational institution from which the education records were obtained. A copy of the DOE's letter to this office may be found on the Office of the Attorney General's website: <http://www.oag.state.tx.us/open/20060725usdoe.pdf>.

552.135 of the Government Code.² We have considered the exceptions you claim and reviewed the submitted information.

Section 552.108(a)(1) 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 . . . 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 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). We note section 552.108 is generally not applicable to the records of an internal affairs investigation that is purely administrative in nature and does not involve the investigation or prosecution of crime. *See City of Fort Worth v. Cornyn*, 86 S.W.3d 320 (Tex. App.—Austin 2002, no pet.); *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.—El Paso 1992, writ denied) (statutory predecessor to section 552.108 not applicable to internal investigation that did not result in criminal investigation or prosecution); *see also* Open Records Decision No. 350 at 3-4 (1982). However, you explain the submitted information relates to a pending criminal investigation by the district’s police department (the “department”). You inform us, and provide an affidavit from the chief of police stating, the department objects to disclosure of the submitted information because its release will interfere with the pending criminal investigation. Based on these representations and our review of the submitted information, we conclude 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) (court describes law enforcement interests that are present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Accordingly, we find the district may withhold the submitted information under section 552.108(a)(1) of the Government Code.³

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.texasattorneygeneral.gov/open/>

²We note the district did not raise section 552.135 of the Government Code as an exception to disclosure within ten business days of the date the district received the request. *See* Gov’t Code §§ 552.301(b), .302. However, because section 552.135 is a mandatory exception that can provide a compelling reason to withhold information from disclosure, we will consider your claim under section 552.135, notwithstanding the district’s violation of section 552.301(b) in raising this exception. *See id.* § 552.302.

³As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

[orl_ruling_info.shtml](#), 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Lana L. Freeman
Assistant Attorney General
Open Records Division

LLF/bhf

Ref: ID# 524359

Enc. Submitted documents

c: Requestor
(w/o enclosures)