



January 5, 2015

Mr. Miguel Salinas
Staff Attorney
Brownsville Independent School District
1900 Price Road
Brownsville, Texas 78521

OR2015-00063

Dear Mr. Salinas:

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# 548737 (No. 7912).

The Brownsville Independent School District (the "district") received a request for statements made by individuals involved in a specified incident, with any personally identifying information of the alleged victims and student witnesses redacted. You state you have released some information to the requestor. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.114 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the requestor specifically requested any identifying information of the alleged victims or student witnesses be redacted from the requested information. Thus, the identifying information of the alleged victims or student witnesses is not responsive to the present request. 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 has informed this office the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code, 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.¹ 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”); *see also* 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). You have submitted unredacted education records for our review. In this instance, the responsive information was obtained or created by the district’s police department (the “department”), and you indicate the information at issue is maintained by the department for a law enforcement purpose. FERPA is not applicable to records that were created by a law enforcement unit of an educational agency or institution for a law enforcement purpose and that are maintained by the law enforcement unit. *See* 20 U.S.C. § 1232g(a)(4)(B)(ii); 34 C.F.R. §§ 99.3, .8. Thus, to the extent the information at issue is maintained by the department, the information is not encompassed by FERPA. You do not indicate, however, whether the information at issue is maintained exclusively by the department. Records created by a law enforcement unit for a law enforcement purpose that are maintained by a component of an educational agency or institution other than the law enforcement unit are not records of the law enforcement unit. *See* 34 C.F.R. § 99.8(b)(2). Therefore, to the extent the information at issue is maintained by a component of the district other than the department, such records are subject to FERPA. In that instance, because our office is prohibited from reviewing education records to determine whether appropriate redactions under FERPA have been made, we will not address the applicability of FERPA to the information at issue, except to note the requestor has a right of access under FERPA to his client’s child’s education records. *See* 20 U.S.C. § 1232g(a)(1)(A); 34 C.F.R. § 99.3. Such determinations under FERPA must be made by the educational authority in possession of the education record.² Likewise, we do not address your argument under section 552.114 of the Government Code. *See* Gov’t Code §§ 552.026 (incorporating FERPA into the Act), .114 (excepting from disclosure “student records”); Open Records Decision No. 539 (1990) (determining the same analysis applies under section 552.114 and FERPA). However, to the extent the responsive information is not governed by FERPA, we will consider your remaining arguments against disclosure of the responsive information.

¹A copy of this letter may be found on the Office of the Attorney General’s website at <http://www.oag.state.tx.us/open/20060725usdoe.pdf>.

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

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information protected by other statutes, such as section 58.007 of the Family Code, which provides, in pertinent part:

(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 Subchapters B, D, and E.

...

(e) Law enforcement records and files concerning a child may be inspected or copied by a juvenile justice agency as that term is defined by Section 58.101, a criminal justice agency as that term is defined by Section 411.082, Government Code, the child, and the child's parent or guardian.

...

(j) Before a child or a child's parent or guardian may inspect or copy a record or file concerning the child under Subsection (e), the custodian of the record or file shall redact:

...

(2) any information that is excepted from required disclosure under Chapter 552, Government Code, or other law.

Fam. Code § 58.007(c), (e), (j)(2). Thus, under section 58.007, law enforcement records relating to a juvenile engaged in delinquent conduct or conduct indicating a need for supervision on or after September 1, 1997, are confidential. *See id.* § 51.03(a), (b) (defining

“delinquent conduct” and “conduct indicating a need for supervision”). For purposes of section 58.007(c), a “child” is a person who is ten years of age or older and under seventeen years of age when the conduct occurred. *See id.* § 51.02(2). Upon review, we find the responsive information consists of law enforcement records involving juvenile conduct that occurred after September 1, 1997. Accordingly, this information is subject to section 58.007(c) of the Family Code. We note, however, the requestor is acting as the legal representative of the parent of one of the juveniles involved in the specified incident. Under section 58.007(e), the juvenile’s parent may inspect law enforcement records concerning his or her child. *Id.* § 58.007(e). Therefore, the requestor has a right to inspect juvenile law enforcement records concerning this juvenile. However, section 58.007(j) provides information subject to any other exception to disclosure under the Act or other law must be redacted. *See id.* § 58.007(j)(2). Thus, pursuant to section 58.007(j)(2) of the Family Code, we will consider your argument under section 552.108 of the Government Code.

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 claiming section 552.108(a)(1) 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). You provided an affidavit from the department stating the responsive information pertains to a current criminal investigation, and release of the information would hinder the investigation and prosecution of this case. Based on your representations and our review, we find release of the responsive 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 delineates law enforcement interests that are present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, section 552.108(a)(1) is applicable to the responsive information.

We note section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov’t Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-88; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of basic information, the district may generally withhold the responsive information under section 552.108(a)(1) of the Government Code.

However, we understand the requestor asserts his client has a right of access to the requested information pursuant to title 2 of the Education Code, subtitle E, chapter 26. Section 26.004 of the Education Code provides that:

A parent is entitled to access to all written records of a school district concerning the parent’s child, including:

- (1) attendance records;
- (2) test scores;
- (3) grades;
- (4) disciplinary records;
- (5) counseling records;
- (6) psychological records;
- (7) applications for admission;
- (8) health and immunization information;
- (9) teacher and school counselor evaluations; and
- (10) reports of behavioral patterns.

Educ. Code § 26.004. Thus, to the extent the responsive information concerns the requestor's client's child, the requestor has a right of access to the information under section 26.004 of the Education Code. Although you seek to withhold the responsive information under section 552.108 of the Government Code, statutes governing the release of specific information prevail over the general exceptions to disclosure found in the Act. *See* Open Records Decision Nos. 613 at 4 (1993) (exceptions in Act cannot impinge on statutory right of access to information), 451 (1986) (specific statutory right of access provisions overcome general exception to disclosure under the Act). Therefore, to the extent the responsive information concerns the requestor's client's child, the responsive information may not be withheld under section 552.108 of the Government Code and must be released to the requestor. To the extent the responsive information is not subject to section 26.004 of the Education Code, with the exception of basic information, the district may withhold the responsive information under section 552.108(a)(1) of the Government Code.

In summary, to the extent the responsive information concerns the requestor's client's child, the requestor has a right of access to the information under section 26.004 of the Education Code, and the district must release this information to the requestor. To the extent the responsive information is not subject to section 26.004 of the Education Code, with the exception of basic information, the district may withhold the responsive information under section 552.108(a)(1) of the Government Code. This ruling does not address the applicability of FERPA to the responsive information, except to note the requestor has a right of access under FERPA to his client's child's education records. Should the district determine all or portions of the responsive information consist of education records that must be withheld under FERPA, the district must dispose of any such 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.texasattorneygeneral.gov/open/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,



Alley Latham
Assistant Attorney General
Open Records Division

AKL/dls

Ref: ID# 548737

Enc. Submitted documents

c: Requestor
(w/o enclosures)