



February 5, 2015

Ms. Holly C. Lytle
Assistant County Attorney
County of El Paso
500 East San Antonio, Room 503
El Paso, Texas 79901

OR2015-02294

Dear Ms. Lytle:

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# 553396 (County File No. OP-14-591).

The El Paso County Sheriff's Office (the "sheriff's office") received a request for video recordings pertaining to a specified incident. You claim the submitted information is excepted from disclosure under section 552.101 in conjunction with the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code and sections 552.108 and 552.114 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we address your claim that the submitted video recordings are education records that must be withheld under FERPA. These provisions apply only to student records in the custody of educational institutions and to records directly transferred from an educational institution to a third party. *See* 34 C.F.R. §§ 99.33(a)(2), 99.3 (defining "student"). The United States Department of Education Family Policy Compliance Office (the "DOE") has informed this office FERPA does not permit state and local educational authorities 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.¹ Although the sheriff's office is not an educational institution, you inform us the sheriff's office directly obtained the submitted video recordings from an educational institution during the course of its investigation. 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 video recordings. Thus, the sheriff's office must contact the educational institution from which the submitted video recordings were obtained, as well as the DOE, regarding the applicability of FERPA to these recordings. 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), 552.114 (excepting from disclosure "student records"); Open Records Decision No. 539 (1990) (determining the same analysis applies under section 552.114 of the Government Code and FERPA). However, we will consider your argument under section 552.108 against disclosure of the submitted information.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that did not result in conviction or deferred adjudication. *See* Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state the submitted information relates to a closed criminal case that did not result in conviction or deferred adjudication. Based on your representations and our review, we find the sheriff's office may withhold the submitted information under section 552.108(a)(2) of the Government Code.

In summary, the sheriff's office must contact the educational institution from which it obtained the submitted video recordings, as well as the DOE, regarding the applicability of FERPA to these recordings. The sheriff's office may withhold the submitted video recordings under section 552.108(a)(2) of the Government Code.

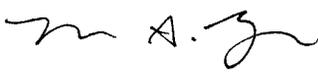
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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

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>.

providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read "N. A. Ybarra". The signature is fluid and cursive, with a prominent initial "N" and a stylized "Ybarra".

Nicholas A. Ybarra
Assistant Attorney General
Open Records Division

NAY/cbz

Ref: ID# 553396

Enc. Submitted documents

c: Requestor
(w/o enclosures)