



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

October 27, 2015

Mr. Mike Harper  
Professional Standards Administrator  
Killeen Independent School District  
P.O. Box 967  
Killeen, Texas 76540-0967

OR2015-22504

Dear Mr. Harper:

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# 585118.

The Killeen Independent School District (the "district") received a request for investigation documentation and video footage pertaining to a specified incident. You state you have released some information. 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 information.<sup>1</sup>

Initially, 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 or an adult student's consent, unredacted, personally identifiable information contained in education records for

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<sup>1</sup>We 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 those records contain substantially different types of information than that submitted to this office.

the purpose of our review in the open records ruling process under the Act.<sup>2</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 information”).

We note the submitted incident report was created by the district’s police department (the “department”) and 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, this information is not encompassed by FERPA and none of it may be withheld on that basis. Because we are able to discern the nature of the redacted information, we are not prevented from determining whether that information falls within the scope of the district’s claimed exceptions to disclosure. Accordingly, we will address the district’s argument with respect to the information at issue, including the redacted information. Nevertheless, we caution the district that a failure to provide this office with requested information generally deprives us of the ability to determine whether information may be withheld and leaves this office with no alternative other than ordering the redacted information to be released. *See* Gov’t Code § 552.301(e)(1)(D) (governmental body must provide this office with copy of specific information requested or representative sample if information is voluminous). You have also submitted, in unredacted form, education records of students other than the requestor’s child. Because our office is prohibited from reviewing an education record to determine the applicability of FERPA, we will not address FERPA with respect to the submitted video recording, except to note the requestor, as a parent, has a right under FERPA to his child’s education records, and the right of access prevails over a claim under sections 552.101 and 552.108. *See* 20 U.S.C. § 1232g(a)(1)(A). Such determinations under FERPA must be made by the educational authority in possession of the education records. However, we will consider your arguments against disclosure of the submitted information.

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. Section 552.101 encompasses section 418.182 of the Government Code, which was added to chapter 418 of the Government Code as part of the Texas Homeland Security Act (“HSA”). Section 418.182(a) of the Government Code provides in relevant part, “information . . . in the possession of a governmental entity that relates to the specifications, operating procedures, or location of a security system used to protect public or private property from an act of terrorism or related criminal activity is confidential.” *Id.* § 418.182(a). The fact that information may be related to a security system does not make the information *per se* confidential under section 418.182. *See* Open Records

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<sup>2</sup>A 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>.

Decision No. 649 at 3 (1996) (language of confidentiality provision controls scope of its protection). Furthermore, the mere recitation by a governmental body of a statute's key terms is not sufficient to demonstrate the applicability of a claimed provision. As with any confidentiality provision, a governmental body asserting section 418.182 must adequately explain how the responsive information falls within the scope of the statute. *See* Gov't Code § 552.301(e)(1)(A) (governmental body must explain how claimed exception to disclosure applies).

The submitted video footage consists of security surveillance video recordings from a district middle school. You state the disclosure of this information would reveal the locations and use of these security surveillance cameras. You further state campus security would be impacted if the information was released because it would enable a viewer to determine the location and capabilities of the cameras. Upon review, we find the submitted video recordings relate to the specifications, operating procedures, or location of a security system used to protect public or private property from an act of terrorism or related criminal activity. *See Tex. Dep't of Pub. Safety v. Abbott*, 310 S.W.3d 670 (Tex. App.—Austin 2010, no pet.) (finding confidential under section 418.182 of the HSA video recording containing images recorded by security cameras in Texas Capitol hallway because specifications of security system included cameras' capabilities and video recording demonstrated those capabilities through characteristics, quality, and clarity of images recorded). Accordingly, the district must withhold the submitted video recordings under section 552.101 of the Government Code in conjunction with section 418.182(a) of the Government Code.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication.<sup>3</sup> Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the information at issue relates to a criminal investigation that has concluded in a final result other than conviction or deferred adjudication. *See id.* §§ 552.108(a)(2), .301(e)(1)(A). The district states the submitted incident report pertains to a criminal case conducted by the department that concluded in a result other than conviction or deferred adjudication. Therefore, we agree section 552.108(a)(2) is applicable to the information at issue.

However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle Publishing 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

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<sup>3</sup>We note the requestor has a right of access to the information at issue pursuant to section 261.201(k) of the Family Code. *See* Fam. Code § 261.201(K) (parent of child victim of abuse or neglect has right of access to information otherwise confidential under section 261.201 (a) of the Family Code). If the district receives another request for this information from a different requestor, the district must again seek a ruling from this office. *See* Gov't Code §§ 552.301, .302; Open Records Decision No. 673 (2001).

S.W.2d 559 (Tex. 1976). See Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). See *id.* Thus, with the exception of basic information, the submitted incident report may be withheld under section 552.108(a)(2) of the Government Code.

In summary, the district must withhold the submitted video recordings under section 552.101 of the Government Code in conjunction with section 418.182(a) of the Government Code. With the exception of basic information, the submitted incident report may be withheld 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](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,



Paige Lay  
Assistant Attorney General  
Open Records Division

PL/dls

Ref: ID# 585118

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)