



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

December 1, 2015

Ms. Vanessa A. Gonzalez  
Counsel for the Baylor University Police Department  
Bickerstaff Heath Delgado Acosta, L.L.P.  
3711 South MoPac Expressway, Building One, Suite 300  
Austin, Texas 78746

OR2015-25021

Dear Ms. Gonzalez:

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# 589119.

The Baylor University Police Department (the "department"), which you represent, received a request for a specified criminal complaint and probable cause affidavit. You claim the submitted information is excepted from disclosure under sections 552.101, 552.103, and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We note the department informs us it has redacted student-identifying information in the submitted responsive information pursuant to the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code.<sup>1</sup> However, FERPA is not applicable to law enforcement records that are maintained and created by the department for

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<sup>1</sup>The United States Department of Education Family Policy Compliance Office (the "DOE") has informed this office that 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. The DOE has determined that FERPA determinations must be made by the educational authority in possession of the education records. We have posted a copy of the letter from the DOE to this office on the Attorney General's website: <http://www.oag.state.tx.us/open/20060725usdoe.pdf>.

a law enforcement purpose. *See* 20 U.S.C. § 1232g(a)(4)(B)(ii); 34 C.F.R. §§ 99.3, .8. The submitted responsive information consists of records that were created by the department for the purpose of law enforcement. Thus, these records are not subject to FERPA, and the department may not withhold any portion of them 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 department's exceptions to disclosure. Accordingly, we will address the department's arguments with respect to the information at issue, including the redacted information. Nevertheless, we caution the department 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).

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: (1) release of the information would interfere with the detection, investigation, or prosecution of crime[.]" Gov't Code § 552.108(a)(1). Generally, 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 state the submitted information relates to an ongoing criminal investigation. Based upon this representation, 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 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 submitted information. Therefore, the department may withhold the submitted information under section 552.108(a)(1) of the Government Code.<sup>2</sup>

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

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<sup>2</sup>As our ruling is dispositive, we need not address your remaining arguments against disclosure.

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 "Ashley Crutchfield". The signature is written in a cursive, flowing style.

Ashley Crutchfield  
Assistant Attorney General  
Open Records Division

AC/dls

Ref: ID# 589119

Enc. Submitted documents

c: Requestor  
(w/o enclosures)