



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 9, 2015

Mr. George Haratsis
Counsel for the Texas Christian University Police Department
McDonald Sanders, P.C.
777 Main Street, Suite 1300
Fort Worth, Texas 76102

OR2015-25764

Dear Mr. Haratsis:

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# 588248.

The Texas Christian University Police Department (the "department"), which you represent, received two requests from different requestors for a specified incident report.¹ You claim the submitted information is not subject to the Act. In the alternative, you claim portions of the submitted information are excepted from disclosure under sections 552.101, 552.108,

¹We note the department sought and received clarification from the first requestor of the information requested. *See* Gov't Code § 552.222(b) (providing if request for information is unclear, governmental body may ask requestor to clarify request); *see also City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding when governmental entity, acting in good faith, requests clarification of unclear or overbroad request for public information, ten-business-day period to request attorney general opinion is measured from date request is clarified or narrowed).

and 552.130 of the Government Code.² We have considered the submitted arguments and reviewed the submitted information.

Initially, we note the 84th Legislature added section 51.212(f) of the Education Code, which reads as follows:

(f) A campus police department of a private institution of higher education is a law enforcement agency and a governmental body for purposes of [the Act], only with respect to information relating solely to law enforcement activities.

Educ. Code § 51.212(f). You inform us the department is a campus police department of a private institution of higher education. *See id.* §§ 51.212(e), 61.003. Thus, you acknowledge the department is a governmental body for purposes of the Act, and information maintained by the department is subject to disclosure under the Act, to the extent such information relates solely to law enforcement activities. You state the submitted information is maintained by the department. However, you argue section 51.212(f) only applies to “incidents and law enforcement activities and related records occurring after [section 51.212(f)’s] effective date.” You state that pursuant to section 311.022 of the Government Code, a statute is presumed to be prospective in its operation unless expressly made retrospective. Gov’t Code § 311.022. Section 51.212(f) of the Education Code went into effect on September 1, 2015. The department received the instant request on September 16, 2015 and sought a ruling from our office on October 7, 2015. Upon review, we find the submitted information consists of records maintained by the department on or after the effective date of section 51.212(f) of the Education Code. Thus, applying section 51.212(f) to the submitted information is a prospective application of the statute. Accordingly, pursuant to section 51.212(f), the submitted information is subject to the Act to the extent such information relates solely to law enforcement activities, and the department must release it unless the department demonstrates the information falls within an exception to public disclosure under the Act. *See id.* §§ 552.006, .021, .301, .302. You acknowledge the submitted information relates solely to law enforcement activities. Accordingly, we will address your claimed exceptions against its disclosure.

Next, you assert portions of the submitted information are excepted from disclosure under the Family Education Rights and Privacy Act (“FERPA”), section 1232g of title 20 of the United States Code. However, FERPA is not applicable to law enforcement records maintained by a law enforcement agency that were created for law enforcement purposes. *See* 20 U.S.C. § 1232g(a)(4)(B)(ii); 34 C.F.R. §§ 99.3, .8. As noted above, the submitted

²Although you raise section 552.026 of the Government Code, this section is not an exception to disclosure. Rather, section 552.026 provides the Act does not require the release of information contained in education records except in conformity with the Family Educational Rights and Privacy Act of 1974. *See* Gov’t Code § 552.026.

information consists of law enforcement records maintained and created by the department for a law enforcement purpose. Thus, the submitted information is not subject to FERPA and no portion of it may be withheld on that basis. *See* Gov't Code § 552.026 (incorporating FERPA into Act).

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[.]” *Id.* § 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 state the submitted information relates to a pending investigation. Based on your representation and our review, we find 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.

However, 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). Section 552.108(c) refers to the basic information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-88; *see also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). We note basic information includes, among other things, a detailed description of the offense. *See* ORD 127 at 3-4. In this instance, you seek to withhold the narrative portion of the submitted report under section 552.108. The remaining portions of the report do not contain information sufficient to satisfy the requirement that a “detailed description of the offense” be released as basic information. *See id.* Accordingly, we determine the department must release a sufficient portion of the narrative to encompass a detailed description of the offense to satisfy the required release of basic information pursuant to *Houston Chronicle*. Thus, with the exception of basic information, which must be released, the department 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.

³As our ruling is dispositive, we need not address your remaining arguments against disclosure of the submitted information.

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,

A handwritten signature in black ink, appearing to read 'Kenny Moreland', written over a horizontal line.

Kenny Moreland
Assistant Attorney General
Open Records Division

KJM/som

Ref: ID# 588248

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)