



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

December 9, 2015

Ms. Veta J. Byrd-Pérez  
Associate General Counsel  
Rice University  
P.O. Box 1892  
Houston, Texas 77251-1892

OR2015-25825

Dear Ms. Byrd-Pérez:

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# 587986 (RUPD Records Request No. 2015-006).

The Rice University Police Department (the "department") received a request for all incidents over a specified time period that involved individuals the requestor has identified as members of a specified organization of Rice University (the "university").<sup>1</sup> You state the department has withheld some information pursuant to the Family Educational Rights and

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<sup>1</sup>You state the department sought and received clarification of the request for information. *See* Gov't Code § 552.222(b) (stating if information requested is unclear to governmental body or if large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used); *City of Dallas v. Abbott*, 304 S.W.3d 380 (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).

Privacy Act (“FERPA”), section 1232g of title 20 of the United States Code.<sup>2</sup> You argue some of the requested information is not subject to the Act. In the alternative, you claim the requested information is excepted from disclosure under sections 552.108, 552.130, 552.137, and 552.147 of the Government Code. We have considered your arguments and reviewed the submitted information.

Initially, we address your claim the information in Exhibit J is not subject to the Act. 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 with regard to information maintained by the department only to the extent to which such information relates solely to law enforcement activities. You argue the information in Exhibit J does not relate solely to law enforcement activities, but also to the enforcement of university regulations. You state “when a [department] officer first begins interacting with a student, he is not solely performing law enforcement activities.” Instead, you argue “[t]he interaction has the potential for becoming an investigation and enforcement of [university] policies, or for becoming an investigation and enforcement of criminal statutes.” Because the incidents being investigated in the information at issue did not result in a student being taken into custody or the filing of criminal charges, you argue section 51.212(f) is inapplicable. However, upon review, we find the information at issue relates to investigations into the potential violations of criminal statutes by the department. Therefore, we find the information in Exhibit J is related solely to law enforcement activities for purposes of section 51.212(f) of the Education Code, and, thus, is subject to the Act.

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<sup>2</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>. We note FERPA is not applicable to law enforcement records maintained by the department that were created by the department for a law enforcement purpose. *See* 20 U.S.C. § 1232g(a)(4)(B)(ii); 34 C.F.R. § 99.3, .8.

Section 552.101 of the Government Code excepts from public disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.”<sup>3</sup> Gov’t Code § 552.101. This section encompasses common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. This office has found a compilation of an individual’s criminal history is highly embarrassing information, the publication of which would be highly objectionable to a reasonable person. *Cf. United States Dep’t of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (when considering prong regarding individual’s privacy interest, court recognized distinction between public records found in courthouse files and local police stations and compiled summary of information and noted that individual has significant privacy interest in compilation of one’s criminal history). Furthermore, we find a compilation of a private citizen’s criminal history is generally not of legitimate concern to the public.

The present request seeks all reports pertaining to individuals identified as members of a specified organization of the university.<sup>4</sup> This request requires the department to compile these individuals’ criminal histories and implicates their rights to privacy. Therefore, to the extent the requested information lists any of these individuals as a suspect, arrestee, or criminal defendant, the department must withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy. However, information that refers to an individual solely as a victim, witness, or involved person is not private because it does not constitute part of a criminal history compilation. Thus, such information may not be withheld under section 552.101 in conjunction with common-law privacy. To the extent the requested information does not list any of the individuals at issue as a suspect, arrestee, or criminal defendant, we will address your arguments against disclosure for this information.

Section 552.108(a) 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). A governmental body claiming section 552.108(a)(1) must reasonably explain how and why the release of the

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<sup>3</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

<sup>4</sup>We note in her request to the university, the requestor states she has attached a list of the names of the individuals whose information she is seeking. The university did not submit that list to this office for review.

information at issue 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, 710 (Tex. 1977). The department states the information in Exhibit J-1 relates to a pending criminal investigation. Based on this representation, we conclude the release of the information at issue 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, 186-87 (Tex. Civ. App.—Houston [14th Dist.] 1975) (delineating law enforcement interests present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Therefore, section 552.108(a)(1) is applicable to the information in Exhibit J-1.

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. 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). You state the remaining information pertains to criminal investigations that concluded in results other than conviction or deferred adjudication. Therefore, we agree section 552.108(a)(2) is applicable to this information.

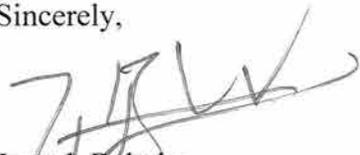
However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 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*). We note basic information does not include motor vehicle record information subject to section 552.130 of the Government Code. Thus, with the exception of basic information, the department may withhold the information in J-1 under section 552.108(a)(1) of the Government Code, and the remaining information under section 552.108(a)(2) of the Government Code.

In summary, to the extent the requested information lists any of the individuals at issue as a suspect, arrestee, or criminal defendant, the department must withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy. To the extent the requested information does not list any of the individuals at issue as a suspect, arrestee, or criminal defendant, with the exception of basic information, which must be released, the department may withhold the information in J-1 under section 552.108(a)(1) of the Government Code, and the remaining information 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,

A handwritten signature in black ink, appearing to read 'JB', with a large, sweeping flourish extending to the right.

Joseph Behnke  
Assistant Attorney General  
Open Records Division

JB/som

Ref: ID# 587986

Enc. Submitted documents

c: Requestor  
(w/o enclosures)