



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 16, 2016

Ms. Julie Chen Allen
General Counsel
Spring Independent School District
16717 Ella Boulevard
Houston, Texas 77090

OR2016-06113

Dear Ms. Allen:

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# 601620 (PIR Nos. 233 and 234).

The Spring Independent School District (the "district") received two requests from the same requestor for information pertaining to two specified conversations. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.114, and 552.135 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

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

¹Although 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 Education Rights and Privacy Act ("FERPA") of 1974. Gov't Code § 552.026. Although you also raise section 552.101 of the Government Code in conjunction with common-law privacy for the submitted information, you provide no arguments explaining how this doctrine is applicable to the information at issue. Therefore, we assume you no longer assert this doctrine. *See id.* §§ 552.301, .302. You also raise section 552.101 of the Government Code in conjunction with section 552.135 of the Government Code. However, section 552.101 does not encompass other exceptions found in the Act. *See Open Records Decision No. 676 at 1-3 (2002).*

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.² 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"). The district submitted unredacted education records for our review. Because our office is prohibited from reviewing these education records to determine whether appropriate redactions under FERPA have been made, we will not address the applicability of FERPA to any of the submitted records. *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. Likewise, we do not address the district's argument under section 552.114 of the Government Code. *See* Gov't Code §§ 552.026 (incorporating FERPA into Act), .114 (excepting from disclosure "student records"); Open Records Decision No. 539 (1990) (determining same analysis applies under section 552.114 of Government Code and FERPA). However, we will consider the district's arguments against disclosure of the submitted information.

Next, the district asserts, and we agree, the information it marked is not responsive because it does not pertain to the specified conversations. This ruling does not address the public availability of non-responsive information, and the district is not required to release non-responsive information in response to this request.

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[.]" 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 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 pertains to a pending criminal investigation being conducted by the district's police department. Based on your 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 (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 responsive information. Accordingly,

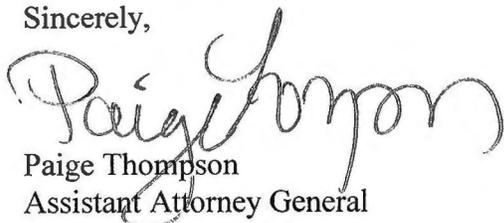
²A copy of this letter may be found on the Office of the Attorney General's website at <https://www.texasattorneygeneral.gov/files/og/20060725usdoe.pdf>.

the district may withhold the submitted responsive 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.

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,



Paige Thompson
Assistant Attorney General
Open Records Division

PT/dls

Ref: ID# 601620

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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