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ATTORNEY GENERAL OF TEXAS

March 28, 2016

Ms. Vanessa Gonzalez
Counsel for Southern Methodist University
Bickerstaff Heath Delgado Acosta, L.L.P.
Building 1, Suite 300
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Austin, Texas 78746

OR2016-06859

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# 603095.

The Southern Methodist University Police Department (the "department"), which you represent, received a request for all calls for service and e-mails sent by and between three named individuals during a specified time period. You state you have released some information to this requestor. You claim the submitted information is excepted from disclosure under the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code and sections 552.101 and 552.108 of the Government Code. We have considered your arguments and reviewed the submitted representative sample of information.¹

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

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

(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 argue Exhibit B4 is administrative information and does not relate “solely to law enforcement activities.” Upon review, we agree the information at issue is administrative in nature and does not relate solely to law enforcement. *See id.* § 51.212(f). Accordingly, we find Exhibit B4 is not subject to disclosure pursuant to section 51.212(f), and need not be released to the requestor.

Next, we note Exhibit B1 is not responsive to the instant request because it was created after the date the department received the request. This ruling does not address the public availability of any information that is not responsive to the request and the department is not required to release such information in response to this request.

Next, the department asserts the remaining responsive information is excepted from disclosure under 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. The remaining responsive information consists of law enforcement records maintained or created by the department for law enforcement purposes. Thus, the information at issue 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), .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).

Section 552.101 of the Government Code excepts “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. Section 552.101 encompasses the doctrine of 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. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. In Open Records Decision No. 393 (1983), this office concluded information that either identifies or tends to identify a victim of sexual assault or other sex-related offense must be withheld under common-law privacy. ORD 393 at 2; *see* Open Records Decision No. 339 (1982); *see also*

Morales v. Ellen, 840 S.W.2d at 519 (Tex. App.—El Paso 1992, writ denied) (identity of witnesses to and victims of sexual harassment was highly intimate or embarrassing information and public did not have a legitimate interest in such information). Upon review, we find the information in Exhibit B3 includes identifying information of a victim of sexual assault. Accordingly, the department must withhold the identifying information of the victim of sexual assault, which we have marked, under section 552.101 in conjunction with common-law privacy.² However, we find you have not demonstrated the remaining responsive information is highly intimate or embarrassing and not of legitimate public concern. Thus, the department may not withhold the remaining responsive information under section 552.101 in conjunction with common-law privacy.

Section 552.108(a)(2) excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. *See* Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.*; *see also id.* § 552.301(e)(1)(A). You state Exhibit B2 relates to closed criminal cases that did not result in convictions or deferred adjudications. Based on your representation and our review, we find section 552.108(a)(2) is applicable to Exhibit B2.

However, section 552.108(a)(2) of the Government Code 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, 186-87 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559, 560-61 (Tex. 1976). *See also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of basic information, which must be released, the department may withhold Exhibit B2 from disclosure under section 552.108(a)(2).

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release.³ *See* Gov't Code § 552.130(a). Accordingly, the department must withhold the motor vehicle record information we have marked in Exhibit B3 under section 552.130.

²As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

³The 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).

In summary, Exhibit B4 is not subject to disclosure pursuant to section 51.212(f) of the Education Code, and need not be released to the requestor. Within Exhibit B3, the department must withhold the identifying information of the victim of sexual assault, which we have marked, under section 552.101 of the Government Code in conjunction with common-law privacy. With the exception of basic information, which must be released, the department may withhold Exhibit B2 from disclosure under section 552.108(a)(2) of the Government Code. The department must withhold the motor vehicle record information we have marked in Exhibit B3 under section 552.130 of the Government Code. The remaining responsive information must be released.

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,



Cole Hutchison
Assistant Attorney General
Open Records Division

CH/dls

Ref: ID# 603095

Enc. Submitted documents

c: Requestor
(w/o enclosures)