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ATTORNEY GENERAL OF TEXAS

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OR2016-07485

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# 604054.

The Southern Methodist University Police Department (the "department"), which you represent, received a request for all police reports related to rape, sexual assault, sexual violence, or sexual abuse filed with the department from a specific date. The department claims 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 the department claims and reviewed the submitted representative sample of information.¹

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.

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

Educ. Code § 51.212(f). We understand the department is a campus police department of a private institution of higher education. *See id.* §§ 51.212(e), 61.003. Thus, 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. The department states the submitted police offense reports were created and are maintained by the department for law enforcement purposes. However, the department asserts the reports do not relate solely to law enforcement activities because the reports are also maintained in duplicate by Southern Methodist University's Office of Institutional Access and Equity (the "office"), and, thus, are not subject to release under the Act pursuant to section 51.212(f). Nevertheless, the submitted offense reports reflect they involve investigations of possible criminal violations. *See* Penal Code § 22.011 (sexual assault). Therefore, we find these reports relate "solely to law enforcement activities" for purposes of section 51.212(f) of the Education Code, and thus, are subject to the Act. Accordingly, this information must be released, unless it falls within an exception to public disclosure under the Act. *See* Gov't Code §§ 552.006, .021, .301, .302. Consequently, we will address the department's arguments against its disclosure under the Act.

Next, the department asserts 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. The United States Department of Education Family Policy Compliance Office has informed FERPA does not permit state and local 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 department states the submitted reports were created and are maintained by the department for a law enforcement purpose. We note FERPA is not applicable to records that were created by a law enforcement unit of an educational agency or institution for a law enforcement purpose and that are maintained by the law enforcement unit. *See* 20 U.S.C. § 1232g(a)(4)(B)(ii); 34 C.F.R. §§ 99.3, .8. The department informs us the submitted information is also maintained by the office, a component of an educational agency. Thus, the department contends this information is subject to FERPA because it is not maintained exclusively by the department. However, these law enforcement records are maintained separate and apart from the records of the office. Further, the request for information was made to the department, and the requestor seeks law enforcement records created and

²A copy of this letter may be found on the Office of the Attorney General's website at <http://www.oag.state.tx.us/open/20060725usdoe.pdf>.

maintained by the department, rather than student records maintained by the office.³ Accordingly, the submitted information is not encompassed by FERPA and none of it may be withheld 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 claimed 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).

Next, we note the requestor states the department may redact victim names and other identifying information, including addresses. Accordingly, this type of information is not responsive to the present 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.

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). The department states the information it has indicated relates to active criminal investigations and release of the information would interfere with those investigations. *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). Based on these representations and our review, we conclude section 552.108(a)(1) of the Government Code is applicable to the information at issue.

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 requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* §§ 552.108(a)(2), .301(e)(1)(A). The department states the information it has indicated pertains to investigations that concluded in a result other than conviction or

³We note this ruling does not address the public availability of any records maintained by the office, and the office is not required to release any information in response to this request.

deferred adjudication. Therefore, we agree section 552.108(a)(2) is applicable to the information at issue.

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 (1976) (summarizing types of information made public by *Houston Chronicle*). We note basic information includes, among other things, a detailed description of the offense. See *id.* Accordingly, with the exception of the responsive basic information, the department may withhold the information it has indicated under section 552.108(a)(1) of the Government Code and the information it has indicated under section 552.108(a)(2) of the Government Code.⁴

In summary, with the exception of the responsive basic information, which must be released, the department may withhold the information it has indicated under section 552.108(a)(1) of the Government Code and the information it has indicated 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, 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,



Rahat Huq
Assistant Attorney General
Open Records Division

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⁴As our ruling is dispositive, we need not address the department's remaining arguments against disclosure of this information, except to note basic information is generally not excepted from public disclosure under section 552.103. Open Records Decision No. 597 (1991).

Ref: ID# 604054

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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