



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 13, 2016

Mr. Darin Darby
Counsel for San Antonio Independent School District
Escamilla & Poneck, LLP
700 North St. Mary's Street, Suite 850
San Antonio, Texas 78205

OR2016-08298

Dear Mr. Darby:

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# 605447.

The San Antonio Independent School District (the "district"), which you represent, received a request for information concerning a specified case, use of force complaints, personnel records for three named officers, policies and procedures concerning the use of force, and data concerning the use of force. You claim the submitted information is excepted from disclosure under sections 552.101, 552.103, 552.108, and 552.117 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We note you have redacted information you claim is protected by the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232g. The United States Department of Education Family Policy Compliance Office 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.¹ You state the district's police department has custody of some of the information at issue. 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

¹A copy of this letter may be found on the Office of the Attorney General's website: <https://www.texasattorneygeneral.gov/files/og/20060725usdoe.pdf>.

the law enforcement unit. *See* 20 U.S.C. § 1232g(a)(4)(B)(ii); 34 C.F.R. §§ 99.3, .8. Accordingly, any information in the custody of the district's police department is not encompassed by FERPA and none of it may be withheld on that basis. However, records created by a law enforcement unit for a law enforcement purpose that are maintained by a component of an educational agency or institution other than the law enforcement unit are not records of the law enforcement unit. *See* 34 C.F.R. § 99.8(b)(2). We also note a parent, and her authorized representative, has a right of access to her own child's education records and FERPA prevails over inconsistent provisions of state law. *See Equal Employment Opportunity Comm'n v. City of Orange, Tex.*, 905 F. Supp. 381, 382 (E.D. Tex. 1995); 20 U.S.C. § 1232g(a)(1)(A); 34 C.F.R. § 99.3; Open Records Decision No. 431 (1985) (information subject to right of access under FERPA may not be withheld pursuant to statutory predecessor to section 552.103 of the Government Code). Such determinations under FERPA must be made by the district, so we will not address the applicability of FERPA to this information. Likewise, we do not address your argument under section 552.114 of the Government Code. *See* Gov't Code §§ 552.026 (incorporating FERPA into the Act), .114 (excepting from disclosure "student records"); Open Records Decision No. 539 (1990) (determining the same analysis applies under section 552.114 of the Government Code and FERPA). However, we will consider your other arguments against disclosure of the submitted information.

Some of the submitted information constitutes completed investigations and evaluations. Section 552.022(a)(1) of the Government Code provides for the required disclosure of "a completed report, audit, evaluation, or investigation made of, for, or by a governmental body," unless it is excepted by section 552.108 of the Government Code or made confidential under the Act or other law. Gov't Code § 552.022(a)(1). You raise section 552.103 for this information. However, section 552.103 does not make information confidential under the Act. *Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475–76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). Accordingly, the district may not withhold any of the information subject to section 552.022(a)(1) under section 552.103 of the Government Code. Nonetheless, we will consider your assertion of section 552.108. Additionally, section 552.101 of the Government Code makes information confidential, so we will also consider the applicability of that exception.

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). We note section 552.108 generally is not applicable to purely administrative records that do not involve the investigation or prosecution of crime. *See City of Fort Worth v. Cornyn*, 86 S.W.3d 320 (Tex. App.—Austin 2002, no pet.). However, you state the submitted

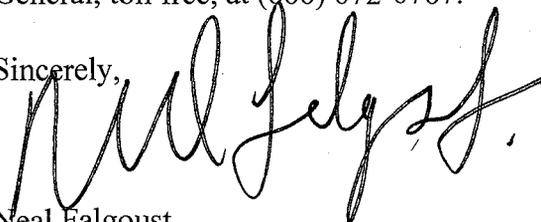
information relates to an active criminal investigation and prosecution, and release of the information would interfere with the investigation and prosecution of a crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Based on these representations and our review, we conclude section 552.108(a)(1) of the Government Code is applicable.

However, section 552.108 does not except from disclosure basic information about a crime. Gov't Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. 531 S.W.2d at 186–87. This information includes, but is not limited to, a sufficient portion of the narrative to include a detailed description of the offense. *See Open Records Decision No. 127 (1976)* (summarizing types of information deemed public by *Houston Chronicle*). Thus, with the exception of basic information, the district may withhold the submitted information under section 552.108(a)(1) of the Government Code.²

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,



Neal Falgoust
Assistant Attorney General
Open Records Division

NF/bhf

²As our ruling is dispositive, we do not address your remaining claimed exceptions, except to note that basic information may not be withheld under section 552.103 of the Government Code. *See Open Records Decision No. 597 (1991)*. We note the requestor has a right of access to some of the information under section 58.007(e) of the Family Code. *See Fam. Code § 58.007(e)* (providing right of access to law enforcement records for parent of juvenile offender). If the district receives another request for this same information from a different requestor, the district must again seek a ruling from this office.

Ref: ID# 605447

Enc. Submitted documents

c: Requestor
(w/o enclosures)