



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 23, 2016

Mr. Derrell A. Coleman
Counsel for Seymour Independent School District
Walsh Gallegos Treviño Russo & Kyle, P.C.
P.O. Box 168046
Irving, Texas 75016

OR2016-14309

Dear Mr. Coleman:

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# 615402.

The Seymour Independent School District (the "district"), which you represent, received a request for information pertaining to the investigation into a named former employee of the district.¹ The district claims the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.135 of the Government Code. We have considered the exceptions the district claims and reviewed the submitted information.

Initially, the district states it has redacted student-identifying information pursuant to the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code.² Further, the district states it has redacted information subject to

¹The district states it sought and received clarification of the request. *See* Gov't Code § 552.222(b) (providing that if request for information is unclear, governmental body may ask requestor to clarify the request); *see also* *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

²The United States Department of Education Family Policy Compliance Office (the "DOE") has informed this office 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. The DOE has determined FERPA determinations must be made by the educational authority in possession of the educational records. We have posted a copy of the letter from the DOE on the Attorney General's website at <http://www.texasattorneygeneral.gov/files/og/20060725usdoe.pdf>.

section 552.117(a)(1) of the Government Code pursuant to section 552.024(c) of the Government Code.³ We note, pursuant to section 552.301 of the Government Code, a governmental body that seeks to withhold requested information must submit to this office a copy of the information, labeled to indicate which exceptions apply to which parts of the copy, unless the governmental body has received a previous determination for the information at issue. *See id.* § 552.301 (a), (e)(1)(D). As such, this information must be submitted in a manner that enables this office to determine whether the information comes within the scope of an exception to disclosure. Although in this case we can discern the nature of a portion of the redacted information, we are unable to discern the nature of all of the redacted information. Therefore, we have no means of determining whether the district has been authorized to withhold any of the remaining information the district has redacted without seeking a ruling from this office. *See id.* § 552.301(a); Open Records Decision No. 673 (2000). Therefore, to the extent the redacted information is not subject to FERPA or excepted from disclosure under section 552.117 of the Government Code, the district has failed to comply with section 552.301 with respect to any such information. Accordingly, pursuant to section 552.302 of the Government Code, the district must release any remaining redacted information not subject to FERPA or excepted from disclosure under section 552.117. *See id.* § 552.302. If the district believes this information is confidential and may not lawfully be released, the district must challenge this ruling in court pursuant to section 552.324 of the Government Code.

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[.]” *Id.* § 552.108(a)(1). A governmental body claiming section 552.108(a)(1) must explain how and why release of the requested information would interfere with the detection, investigation, or prosecution of crime. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). Section 552.108 may be invoked by any proper custodian of information relating to a pending investigation or prosecution of criminal conduct. *See* Open Records Decision No. 474 at 4-5 (1987) (section 552.108 may be invoked by any proper custodian of information relating to pending investigation or prosecution of criminal conduct). Where a non-law enforcement agency has custody of information relating to a pending case of a law enforcement agency, the custodian of records may withhold the information if it provides this office with a demonstration that the information relates to a pending case and a representation from the law enforcement agency that it wishes to have the information withheld. The district states, and provides documentation from the Baylor County District Attorney’s Office (the “district attorney’s office”) stating, the district attorney’s office objects

³Section 552.024(c)(2) of the Government Code authorizes a governmental body to redact information protected by section 552.117(a)(1) of the Government Code without the necessity of requesting a decision under the Act if the current or former employee or official to whom the information pertains timely chooses not to allow public access to the information. *See* Gov’t Code § 552.024(c)(2). If a governmental body redacts such information, it must notify the requestor in accordance with subsections 552.024(c-1) and (c-2). *See id.* § 552.024(c-1)-(c-2).

to release of the remaining information because release would interfere with an ongoing criminal investigation. Based on this representation, we conclude that section 552.108(a)(1) is applicable in this instance. *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). Accordingly, the district may withhold the remaining information on behalf of the district attorney's office under section 552.108(a)(1) of the Government Code.⁴

In summary, to the extent the redacted information is not redacted pursuant to FERPA and section 552.024(c) of the Government Code, the district must release the remaining information it has redacted. The district may withhold the remaining information under section 552.108(a)(1) of the Government Code on behalf of the district attorney's office.

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

RSH/som

Ref: ID# 615402

Enc. Submitted documents

c: Requestor
(w/o enclosures)

⁴As our ruling is dispositive, we need not address the district's remaining argument against disclosure.