



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 27, 2016

Ms. Sierra D. Fisher
Counsel for the Beaumont Independent School District
Karczewski Bradshaw, L.L.P.
315 North Church Street
Nacogdoches, Texas 75961

OR2016-14595

Dear Ms. Fisher:

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# 615692.

The Beaumont Independent School District (the "district"), which you represent, received a request for a specified arrest warrant affidavit.¹ You claim the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note you have redacted identifying information from the submitted information. 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 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

¹You state the district received clarification of the request for information. *See* Gov't Code § 552.222(b) (stating governmental body may communicate with requestor for purpose of clarifying or narrowing request for information).

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”). However, 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. Upon review, we find the information you have redacted is contained within law enforcement records created by the district’s police department (the “department”) for a law enforcement purpose. These records are not subject to FERPA and no portion of these records may be withheld on that basis. However, because we can discern the nature of the redacted information, being deprived of the information does not inhibit our ability to make a ruling. Nonetheless, in the future, the district must not redact information from the information it submits to this office unless it is authorized to do so by statute or the information is the subject of a previous determination under section 552.301 of the Government Code. Failure to comply with section 552.301 may result in the information being presumed public under section 552.302 of the Government Code. *See* Gov’t Code § 552.302.

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). Generally, a governmental body claiming section 552.108(a)(1) must 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, 710 (Tex. 1977). You state, and provide documentation showing, the submitted information relates to a criminal investigation pending with the department. Based upon this representation, we conclude the release of the submitted information 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, 186-87 (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, 560-61 (Tex. 1976). Accordingly, the district may withhold the submitted information under section 552.108(a)(1).

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.

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>

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,

A handwritten signature in black ink that reads "Cole Hutchison". The signature is written in a cursive style with a long horizontal flourish at the end.

Cole Hutchison
Assistant Attorney General
Open Records Division

CH/akg

Ref: ID# 615692

Enc. Submitted documents

c: Requestor
(w/o enclosures)