KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 5, 2016

Ms. Vanessa A. Gonzalez
Counsel for Baylor University
Bickerstaff Heath Delgado Acosta, L.L.P.
3711 MoPac Expressway
Building One, Suite 300
Austin, Texas 78746

OR2016-15144

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# 617217.

The Baylor University Police Department (the "department"), which you represent, received a request for reports of sexual assault during a specified time period. The department claims some of the requested information is not subject to the Act. Additionally, the department claims the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered your arguments 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:

[1]We assume that 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). 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. We note some of the requested information, including some of the submitted information, was the subject of previous requests for information, in response to which this office issued Open Records Letter Nos. 2015-24446 (2015), 2016-02966 (2016), and 2016-11315 (2016). In its request for a ruling from this office in Open Records Letter No. 2015-24446, the department submitted a number of offense reports in their entirety, with the exception of certain redactions. In Open Records Letter Nos. 2015-24446, 2016-02966, and 2016-11315, we considered whether the requested information at issue was excepted from disclosure under certain exceptions in the Act and, therefore, considered the information at issue subject to the Act as information related solely to law enforcement activities. The department stated the requested police offense reports were created and are maintained by the department for law enforcement purposes. However, the department now asserts the requested offense reports do not relate solely to law enforcement activities because the reports are also maintained in duplicate by Baylor University's Judicial Affairs Office or Baylor University's Title IX Office (collectively, the "offices"), and, thus, are not subject to release under the Act pursuant to section 51.212(f). Nevertheless, the requested offense reports involve investigations by the department of possible criminal violations. *See* Penal Code §§ 22.011, .021 (sexual assault and aggravated sexual assault). Therefore, we find the information at issue relates "solely to law enforcement activities" for purposes of section 51.212(f) of the Education Code, and thus, is 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.

As previously noted, in its request for a ruling from this office in Open Records Letter No. 2015-24446 for the previously requested information, the department submitted a number of offense reports in their entirety, with the exception of certain student-identifying information it redacted under the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code. In Open Records Letter Nos. 2015-24446, 2016-02966, and 2016-11315, we determined, in part, FERPA was not applicable to the information at issue because it consisted of law enforcement records that were maintained and created by the department for a law enforcement purpose. The department now seeks to withhold some of the requested reports in their entirety pursuant to FERPA, and some of the reports the department previously submitted were not provided

to this office in this instance. *See* Gov't Code § 552.026 (incorporating FERPA into the Act); *see also id.* § 552.114 (excepting from disclosure "student records"); Open Records Decision No. 539 (1990) (determining same analysis applies under section 552.114 of Government Code and FERPA). The department states the requested reports at issue were created and are maintained by the department for a law enforcement purpose. As previously discussed in Open Records Letter Nos. 2015-24446, 2016-09666, and 2016-11315, although the United States Department of Education Family Policy Compliance Office has informed this office 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, 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 some of the requested information is also maintained by the offices, components 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 offense reports are maintained separate and apart from the records of the offices. Further, the previous requests and the current request for information were made to the department, and the requestors sought law enforcement records created and maintained by the department for a law enforcement purpose, rather than student records maintained by the offices.[2] Accordingly, the requested information is not encompassed by FERPA and none of it may be withheld on that basis.

Nevertheless, in Open Records Letter No. 2015-24446, we determined the department: (1) with the exception of basic information, which must be released, may withhold certain information under section 552.108(a)(1) of the Government Code and certain information under section 552.108(a)(2) of the Government Code; (2) must withhold certain information under section 552.101 of the Government Code in conjunction with common-law privacy; and (3) must release the remaining requested information. In Open Records Letter No. 2016-02966, we determined the department: (1) must continue to rely on Open Records Letter No. 2015-24446 as a previous determination and withhold or release the requested sexual-assault cases in accordance with that ruling; (2) with the exception of basic information, which the department must release, may withhold certain information under section 552.108(a)(2) of the Government Code; and (3) to the extent any other responsive information pertaining to a certain type of crime existed when the department received the request for information, must release this information to the requestor in accordance with section 552.302 of the Government Code. Further, in Open Records Letter No. 2016-11315, we determined: (1) the department must continue to rely on Open Records Letter Nos. 2015-24446 and 2016-02966 as previous determinations and withhold or release the previously requested information in accordance with those rulings, and (2) to the extent it

[2]We note this ruling does not address the public availability of any records maintained by the offices, and the offices are not required to release any information in response to this request.

existed, we must rely on the department's assertion the remaining requested information not subject to the previous rulings is subject to FERPA. We have no indication the law, facts, or circumstances on which the prior rulings were based have changed. Accordingly, the department must continue to rely on Open Records Letter Nos. 2015-24446, 2016-02966, and 2016-11315 as previous determinations and withhold or release the previously requested information in accordance with those rulings. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). However, the information submitted in Exhibit B-1 is not subject to the previous rulings. Thus, we will address the exceptions you claim for this information.

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 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). You state Exhibit B-1 pertains to an active criminal investigation or prosecution. Based on your representation, we conclude the release of the information at issue 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 (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). Thus, section 552.108(a)(1) is applicable to Exhibit B-1.

However, we note section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-88; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). We note basic information includes, among other things, the identity of the complainant, but does not include the identity of the victim, unless the victim is the complainant. *See* ORD 127 at 3-4. Thus, with the exception of the basic information, which must be released, the department may withhold Exhibit B-1 under section 552.108(a)(1) of the Government Code.[3]

In summary, the department must continue to rely on Open Records Letter Nos. 2015-24446, 2016-02966, and 2016-11315 as previous determinations and withhold or release the identical information in accordance with those rulings. With the exception of the

---

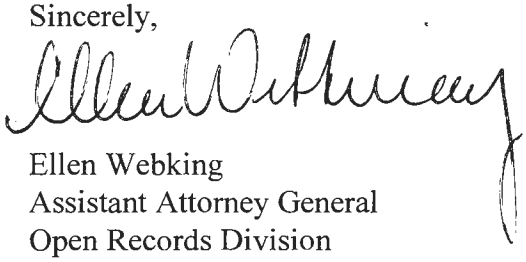
[3]As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

basic information, which must be released, the department may withhold Exhibit B-1 under section 552.108(a)(1) 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,



Ellen Webking
Assistant Attorney General
Open Records Division

EW/bw

Ref: ID# 617217

Enc. Submitted documents

c: Requestor
(w/o enclosures)