



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 South MoPac Expressway, Building One, Suite 300
Austin, Texas 78746

OR2016-15230

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# 617882.

The Baylor University Police Department (the "department"), which you represent, received a request for information pertaining to a specified incident. You claim the submitted information is not subject to the Act. Alternatively, you claim the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered your arguments and reviewed the submitted information.

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.

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 asserts the submitted information does not relate solely to law enforcement activities because the information at issue is also

maintained in duplicate by Baylor University's Title IX Office (the "office"), and thus, is not subject to release under the Act pursuant to section 51.212(f). Nevertheless, the submitted offense report reflects it involves an investigation of possible criminal violations. Therefore, we find the submitted information 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.

Next, the department asserts the submitted offense report in its entirety 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.¹ 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 report was created and is 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 maintained by the department, rather than student records maintained by the office.² Therefore, the submitted information is not encompassed by FERPA and none of it may be withheld on that basis. Accordingly, we will address the department's arguments with respect to the information at issue.

Section 552.108(a)(2) of the Government Code excepts from disclosure information dealing with the detection, investigation, or prosecution of crime only in relation to an investigation that concluded in a result other than conviction or deferred adjudication. Gov't Code

¹A 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>.

²We 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.

§ 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e) (governmental body must provide comments explaining why exceptions raised should apply to information requested). The department states the submitted information relates to a concluded case that did not result in a conviction or deferred adjudication. Based on the department's representation, we conclude section 552.108(a)(2) is applicable to the information at issue.

Section 552.108, however, 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 Publ'g 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*). Thus, with the exception of basic information, which must be released, the department may withhold the submitted information 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,



Cristian Rosas-Grillet
Assistant Attorney General
Open Records Division

CRG/bw

Ref: ID# 617882

Enc. Submitted documents

c: Requestor
(w/o enclosures)