



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

December 11, 2002

Mr. David Galbraith
Assistant General Counsel
Houston Independent School District
3830 Richmond Avenue
Houston, Texas 77027-5838

OR2002-7059

Dear Mr. Galbraith:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 172851.

The Houston Independent School District Police Department (the "department") received a request for a copy of the disciplinary action taken against two named officers arising from a complaint made against them, and all statements relating to the complaint. You claim that the requested information is excepted from disclosure under sections 552.108, 552.117, 552.1175, 552.119, and 552.135 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted information.

As an initial matter, we note that the department has apparently redacted information pursuant to the Family Educational Rights and Privacy Act of 1974 ("FERPA"). FERPA provides that no federal funds will be made available under any applicable program to an educational agency or institution that releases personally identifiable information (other than directory information) contained in a student's education records to anyone but certain enumerated federal, state, and local officials and institutions, unless otherwise authorized by the student's parent. *See* 20 U.S.C. § 1232g(b)(1). "Education records" means those records that contain information directly related to a student and are maintained by an educational agency or institution or by a person acting for such agency or institution. *Id.* § 1232g(a)(4)(A). This office generally applies the same analysis under section 552.114 and FERPA. Open Records Decision No. 539 (1990).

Section 552.114 excepts from disclosure student records at an educational institution funded completely or in part by state revenue. Section 552.026 provides as follows:

This chapter does not require the release of information contained in education records of an educational agency or institution, except in conformity with the Family Educational Rights and Privacy Act of 1974, Sec. 513, Pub. L. No. 93-380, 20 U.S.C. Sec. 1232g.

In Open Records Decision No. 634 (1995), this office concluded that (1) an educational agency or institution may withhold from public disclosure information that is protected by FERPA and excepted from required public disclosure by sections 552.026 and 552.101 without the necessity of requesting an attorney general decision as to those exceptions, and (2) an educational agency or institution that is state-funded may withhold from public disclosure information that is excepted from required public disclosure by section 552.114 as a "student record," insofar as the "student record" is protected by FERPA, without the necessity of requesting an attorney general decision as to that exception.

Information must be withheld from required public disclosure under FERPA only to the extent "reasonable and necessary to avoid personally identifying a particular student." *See* Open Records Decision Nos. 332 (1982), 206 (1978). This includes information that directly identifies a student, as well as information that, if released, would allow the student's identity to be easily traced. *See* Open Records Decision No. 224 (1979) (finding student's handwritten comments making identity of student easily traceable through handwriting, style of expression, or particular incidents related in comments protected under FERPA).

We note that the term "education records" does not include "records maintained by a law enforcement unit of the educational agency or institution that were created by that law enforcement unit for the purpose of law enforcement." *Id.* § 1232g(a)(4)(B)(ii). The submitted information report and offense report are therefore not education records to which FERPA applies. *See* 34 C.F.R. § 99.8(b) (2000) (defining law enforcement records). With regard to the remainder of the submitted information, we agree that the information directly relates to a student and constitutes education records for the purpose of FERPA. However, FERPA gives a parent the right to inspect and review the education records of his or her child. *See* 20 U.S.C. § 1232g(a)(1)(A). Because the requestor is the mother of the complaining student, we find that the requestor has a right of access to most of the information, including information you have redacted, relating to this student under FERPA. *See* 20 U.S.C. § 1232g(a)(1)(A). However, the requestor does not have a right of access to the identifying information of other students contained in the education records.

Thus, the department must withhold the identifying information of other students within the submitted education records under FERPA and section 552.114 of the Government Code. Any redacted information identifying the complaining student must be released except as noted below. We have marked the information identifying other students that must be withheld pursuant to FERPA.

Next, we note that the submitted information report is made confidential under section 552.101 of the Government Code. Section 552.101 protects “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” This section encompasses confidentiality provisions such as section 58.007 of the Family Code. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997, are confidential under section 58.007. The juvenile must have been at least 10 years old and less than 17 years of age when the conduct occurred.¹ The relevant language of section 58.007(c) reads as follows:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

- (1) if maintained on paper or microfilm, kept separate from adult files and records;
- (2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and
- (3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapter B.

Report number 039464902 involves juvenile conduct that occurred after September 1, 1997. We have no basis for finding that any of the exceptions in section 58.007 apply; therefore, this report is confidential pursuant to section 58.007(c) of the Family Code. You must withhold this information from disclosure in its entirety under section 552.101 of the Government Code.

We now address your claim under section 552.108 with respect to the remaining submitted information. Section 552.108 provides, in relevant part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

- (1) release of the information would interfere with the detection, investigation, or prosecution of crime;

¹ See Fam. Code § 51.02(2) (defining “child” for purposes of title 3 of Family Code).

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication; [or]

Gov't Code §§ 552.108(a)(1), (a)(2). Generally, a governmental body claiming section 552.108(a)(1) must reasonably explain, if the information does not supply the explanation on its face, how and why the release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(a)(1), (b)(1), .301(e)(1)(a); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. In this case, we find that you have not demonstrated that release of any of the submitted information at issue would interfere with the detection, investigation, or prosecution of crime under section 552.108(a)(1), or that it relates to a criminal investigation that did not result in conviction or deferred adjudication under section 552.108(a)(2). *See Morales v. Ellen*, 840 S.W.2d 519, 526 (Tex. App.—El Paso 1992, writ denied) (section 552.108 not applicable where no criminal investigation or prosecution of police officer resulted from investigation of allegation of sexual harassment); Open Records Decision No. 350 (1982) (predecessor provision of section 552.108 not applicable to IAD investigation file when no criminal charge against officer results from investigation of complaint against police officer). Therefore, you may not withhold any information under section 552.108.

The submitted documents, however, contain information that is confidential under section 552.117. Section 552.117(2) excepts from public disclosure a peace officer's home address, home telephone number, social security number, and information indicating whether the peace officer has family members regardless of whether the peace officer made an election under section 552.024 of the Government Code.² We have marked information pertaining to a peace officer that must be withheld under section 552.117. However, we note that an alternate telephone number of the officer is excepted under section 552.117 only if the telephone was purchased and privately owned by the officer. *See* Open Records Decision No. 506 at 5-6 (1988) (predecessor to section 552.117 does not apply to cellular phone numbers paid for by county and intended for use at *work* for county business). As section 552.117 is dispositive for this information, we do not address your claim under section 552.1175.

Further, the documents contain information pertaining to Houston Independent School District employees that may also be confidential under section 552.117. Section 552.117(1) excepts from disclosure the home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a

² Section 552.117(2) applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure.

governmental body who request that this information be kept confidential under section 552.024. Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Thus, to the extent the employees whose personal information is at issue elected under section 552.024, prior to the request, to keep this information confidential, you must withhold it under section 552.117(1) of the Government Code. We have marked this information. You may not withhold this information under section 552.117 to the extent the employees have not made timely elections under section 552.024.

You also claim that information is excepted under section 552.119 of the Government Code. Section 552.119 excepts from public disclosure a photograph of a peace officer that, if released, would endanger the life or physical safety of the officer, unless one of three exceptions applies. *See* Gov't Code § 552.119. However, because the submitted information contains no such photographs, you may not withhold any information under that section.

We note that section 552.130 excepts from public disclosure information relating to a driver's license or motor vehicle title or registration issued by an agency of this state. Gov't Code § 552.130. Thus, to the extent the driver's license numbers we have marked correspond to driver's licenses issued in Texas, you must withhold these numbers under section 552.130.

You also claim that information is excepted under section 552.135 of the Government Code. Section 552.135 provides as follows:

(a) "Informer" means a student or former student or an employee or former employee of a school district who has furnished a report of another person's or persons' possible violation of criminal, civil, or regulatory law to the school district or the proper regulatory enforcement authority.

(b) An informer's name or information that would substantially reveal the identity of an informer is excepted from [required public disclosure].

(c) Subsection (b) does not apply:

(1) if the informer is a student or former student, and the student or former student, or the legal guardian, or spouse of the student or former student consents to disclosure of the student's or former student's name; or

(2) if the informer is an employee or former employee who consents to disclosure of the employee's or former employee's name; or

(3) if the informer planned, initiated, or participated in the possible violation.

(d) Information excepted under Subsection (b) may be made available to a law enforcement agency or prosecutor for official purposes of the agency or prosecutor upon proper request made in compliance with applicable law and procedure.

(e) This section does not infringe on or impair the confidentiality of information considered to be confidential by law, whether it be constitutional, statutory, or by judicial decision, including information excepted from the requirements of Section 552.021.

Gov't Code § 552.135. Because the legislature specifically limited the protection of section 552.135 to the identity of a person who reports a possible violation of "law," a school district that seeks to withhold information under section 552.135 must clearly identify to this office the specific civil, criminal, or regulatory law that is alleged to have been violated. *See also* Gov't Code § 552.301(e)(1)(A). You do not indicate the specific individual whose identity you seek to withhold, nor do you identify the specific law that any individual alleged had been violated. Thus, we conclude that the department may not withhold any of the remaining submitted information under section 552.135.

In summary, we have marked information contained in education records that identifies students other than the complaining student; this information must be withheld under FERPA and section 552.114 of the Government Code. You must withhold incident report number 039464902 under section 552.101 in conjunction with section 58.007 of the Family Code. You must withhold the personal information pertaining to a peace officer that we have marked under section 552.117(2), including an alternate telephone number if the telephone was privately purchased and owned. You must withhold the information we have marked pertaining to school district employees under section 552.117(1) to the extent they made timely elections under section 552.024. You must withhold the driver's license numbers we have marked under section 552.130 if they correspond to driver's licenses issued in Texas. The remaining information, including information identifying the complaining student that you have redacted, must be released.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full

benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

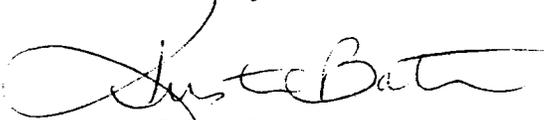
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Kristen Bates
Assistant Attorney General
Open Records Division

KAB/seg

Ref: ID# 172851

Enc. Submitted documents

c: Ms. Karen McKeever Byrd
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(w/o enclosures)