



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 9, 2005

Ms. Ylise Janssen
Senior School Law Attorney
Austin Independent School District
1111 West Sixth Street
Austin, Texas 78703-5399

OR2005-02012

Dear Ms. Janssen:

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# 222491.

The Austin Independent School District (the "district") received a request for information relating to an incident at Bowie High School involving six named individuals. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exception you claim and have reviewed the information you submitted.

Section 552.101 excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception encompasses information that other statutes make confidential. You raise section 552.101 in conjunction with section 261.201 of the Family Code. Section 261.201(a) provides as follows:

- (a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with [the Family Code] and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under [chapter 261 of the Family Code] and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, and working papers used or developed in an investigation under [chapter 261 of the Family Code] or in providing services as a result of an investigation.

Fam. Code § 261.201(a); *see also* Open Records Decision No. 440 at 2 (1986) (addressing predecessor statute). You assert that section 261.201(a) is applicable to the submitted information. We find, however, that this information is not a report of alleged or suspected child abuse or neglect made under chapter 261 of the Family Code. Likewise, we find that the information in question does not consist of files, reports, records, communications, or working papers used or developed in an investigation under chapter 261 or in providing services as a result of an investigation. We therefore conclude that the district may not withhold any of the submitted information under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.

Section 552.101 also encompasses information made confidential under the federal Family Educational Rights and Privacy Act of 1974 (“FERPA”).¹ *See* 20 U.S.C. § 1232g. 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 id.* § 1232g(b)(1); 34 C.F.R. § 99.3 (defining personally identifiable information). “Education records” under FERPA are those records that contain information directly related to a student and that are maintained by an educational agency or institution or by a person acting for such agency or institution. *See* 20 U.S.C. § 1232g(a)(4)(A).

You appear to believe that the submitted information constitutes an education record for purposes of FERPA. We note, however, that the information is a record of the district’s police department. FERPA excludes from its statutory definition of education records “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.” *See* 20 U.S.C. § 1232g(a)(4)(B)(ii). Section 99.8 of title 34 of the Code of Federal Regulations provides in part:

¹Section 552.026 incorporates FERPA into the Act. *See* Gov’t Code § 552.026 (Act “does not require the release of information contained in education records of an educational agency or institution, except in conformity with [FERPA]”).

(b)(1) Records of a law enforcement unit means those records, files, documents, and other materials that are –

- (i) Created by a law enforcement unit;
- (ii) Created for a law enforcement purpose; and
- (iii) Maintained by the law enforcement unit.

34 C.F.R. § 99.8(b)(1); *see also id.* § 99.3 (defining “education records” as not including “[r]ecords of the law enforcement unit of an educational agency or institution, subject to the provisions of § 99.8); Open Records Decision No. 612 (1992) (FERPA and statutory predecessor to Gov’t Code § 552.114 not applicable to incident and arrest reports of state university campus police departments).²

You inform us that the submitted information was created by the district’s police department for a law enforcement purpose. You also indicate that this information is maintained by the district’s police department. Based on your representations and our review of the submitted information, we conclude that the information is a record of the law enforcement unit of the district. Thus, the submitted information is not an education record of the district, for purposes of FERPA, and may not be withheld from the requestor on that basis under section 552.101 of the Government Code.

You also raise section 552.108. This section 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 that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information that the governmental body seeks to withhold. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986). You inform us that the submitted information relates to a pending case. Based on your representation, we find 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), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases).

²Section 552.114 excepts from public disclosure “information in a student record at an educational institution funded wholly or partly by state revenue.” Gov’t Code § 552.114(a). This office generally considers a student record under section 552.114 to be the equivalent of an education record under FERPA. *See* Open Records Decision No. 634 (1995).

We note that 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). Section 552.108(c) refers to the basic front-page information held to be public in *Houston Chronicle*. The district must release basic information, including a detailed description of the offense, even if the information does not literally appear on the front page of an offense or arrest report. See *Houston Chronicle*, 531 S.W.2d at 186-88; Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). The district may withhold the rest of the submitted information under section 552.108(a)(1).

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).

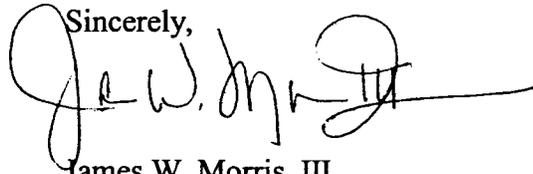
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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); *Tex. Dep’t of Pub. 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,


James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/sdk

Ref: ID# 222491

Enc: Submitted documents

c: Mr. Mark Wolfington
c/o Ms. Ylise Janssen
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(w/o enclosures)