



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 29, 2009

Mr. Humberto F. Aguilera
Escamilla & Poneck, Inc.
P.O. Box 200
San Antonio, Texas 78291-0200

OR2009-08936

Dear Mr. Aguilera:

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# 347417.

The Edgewood Independent School District (the "district"), which you represent, received a request for information pertaining to the requestor's client. You claim that 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.¹

Initially, you state that you are withholding some of the requested information pursuant to the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232(a). We note that the United States Department of Education Family Policy Compliance Office has informed this office that 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

¹To the extent any additional information responsive to this request existed on the date the district received the request, we assume you have released it. If you have not released any such information to the requestor, you must do so at this time. *See* Gov't Code §§ 552.301(a), 302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

open records ruling process under the Act.² See 20 U.S.C. § 1232g(d). 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 submitted information consists of records created and maintained by the district’s police department. We note, however, that FERPA is not applicable to law enforcement records maintained by the district’s police department that were created by the department for a law enforcement purpose. See 20 U.S.C. § 1232g(a)(4)(B)(ii); 34 C.F.R. §§ 99.3, .8. Therefore, the submitted information is not subject to FERPA and no portion of it may be withheld on that basis. Because we can discern the nature of the information that has been redacted, being deprived of this information does not inhibit our ability to make a ruling in this instance. Nevertheless, be advised a failure to provide this office with requested information generally deprives us of the ability to determine whether information may be withheld and leaves this office with no alternative other than ordering the redacted information be released. See Gov’t Code §§ 552.301(e)(1)(D) (governmental body must provide this office with copy of “specific information requested” or representative sample), 552.302. Thus, we will address the applicability of the claimed exception to the submitted information.

Section 552.108(a)(2) excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if 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 [.]” *Id.* § 552.108(a)(2). Section 552.108(a)(2) is applicable only if the information at issue relates to a concluded criminal case that did not result in a conviction or a deferred adjudication. Generally, a governmental body claiming section 552.108 must reasonably explain how and why this exception is applicable to the information the governmental body seeks to withhold. See *id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You explain the submitted information relates to a criminal investigation that has concluded and did not result in a conviction or deferred adjudication. Based on our review and your representations, we find section 552.108(a)(2) is applicable to the submitted information.

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 Publishing 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 includes a detailed description of the offense, the district may withhold the submitted information under section 552.108(a)(2) of the Government Code.

²A copy of this letter may be found on the Office of the Attorney General’s website: <http://www.oag.state.tx.us/open/20060725usdoe.pdf>.

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.oag.state.tx.us/open/index_orl.php, 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 must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Paige Savoie
Assistant Attorney General
Open Records Division

PS/eeg

Ref: ID# 347417

Enc. Submitted documents

cc: Requestor
(w/o enclosures)