



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 23, 2010

Mr. Ricardo Lopez
Feldman, Rogers, Morris & Grover, LLP
517 Soledad Street
San Antonio, Texas 78205-1508

OR2010-04074

Dear Mr. Lopez:

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#373354.

The North East Independent School District (the "district"), which you represent, received four requests for a specified school bus video. You claim the submitted information is excepted from disclosure under sections 552.108 and 552.114 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

You claim the submitted information is subject to section 552.114 of the Government Code and the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232g(a). We note the United States Department of Education Family Policy Compliance Office (the "DOE") 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 purposes of our review in the open records ruling process under the Act.¹ See 20 U.S.C. § 1232g(d). However, FERPA is not applicable to law enforcement records maintained by the district's police department for law enforcement purposes. 20 U.S.C. § 1232g(a)(4)(B)(ii); see *id.* § 1232g(a)(4) (defining "education record"). You state the information at issue is maintained by the district's police department and is part of a criminal investigation into the incident.

¹A 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>.

Accordingly, because the submitted information is maintained by a law enforcement unit of an educational agency, the information does not constitute an education record subject to FERPA and no portion of it may be withheld on that basis. Likewise, we do not address your arguments under section 552.114 of the Government Code. *See* Gov't Code §§ 552.026 (incorporating FERPA into the Act), .114 (excepting from disclosure "student records"); Open Records Decision No. 539 (1990) (determining the same analysis applies under section 552.114 of the Government Code and FERPA). 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 but to order 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 remaining claimed exception to the submitted information.

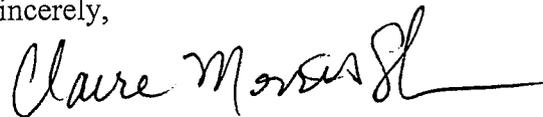
Section 552.108(a)(1) of the Government Code excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime." *Id.* § 552.108(a)(1). Generally, a governmental body claiming section 552.108 must reasonably 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 the submitted information pertains to an ongoing criminal investigation by the Bexar County District Attorney's Office (the "district attorney"). You have provided a statement from the district attorney indicating it objects to release of the submitted information because the submitted information relates to an ongoing criminal investigation and prosecution. Based upon these representations, we conclude release of the submitted information will 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), *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). Therefore, the district may withhold the submitted information 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.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, toll free at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read "Claire Morris Sloan", with a long horizontal flourish extending to the right.

Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/jb

Ref: ID# 373354

Enc. Submitted documents

c: 4 Requestors
(w/o enclosures)