



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 18, 2010

Ms. Alicia Currin-Moore
Underwood Law Firm
P.O. Box 9158
Amarillo, Texas 79105-9158

OR2010-07125

Dear Ms. Currin-Moore:

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# 379655.

The Pampa Independent School District (the "district"), which you represent, received a request for all statements and notes of conversations by interested parties concerning a specified incident. You state that the district has released some of the requested information to the requestor. 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.

You inform us the district has redacted some of the student-identifying information in the submitted documents pursuant to 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 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 open records ruling process under the Act.¹ See 20 U.S.C. § 1232g(d). However, FERPA is generally not applicable to law enforcement records maintained for a law enforcement purpose. See *id.* § 1232g(a)(4)(B)(ii); 34 C.F.R. §§ 99.3, .8. You have submitted Pampa Police Department

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>.

(the "department") voluntary statements, which are law enforcement records maintained for a law enforcement purpose. Accordingly, because the submitted information is maintained by the department, the information does not constitute an education record 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 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), .302. Thus, we will address the applicability of the 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 Gray County Attorney (the "county attorney") has informed the district "that charges have been filed against the assailant in this case and that disclosure of the requested documents will hinder further investigation and interfere with the prosecution of the crime." You further state the county attorney requests that the submitted voluntary statements of the department not be disclosed. 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); *see also* Open Records Decision Nos. 474 (1987), 372 (1983) (where incident involving allegedly criminal conduct is still under active investigation or prosecution, section 552.108 may be invoked by any proper custodian of information relating to incident). 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 "Sarah Casterline", with a long horizontal stroke extending to the right.

Sarah Casterline
Assistant Attorney General
Open Records Division

SEC/eeg

Ref: ID# 379655

Enc. Submitted documents

c: Requestor
(w/o enclosures)