



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 15, 2010

Mr. Justin R. Graham

Abernathy, Roeder, Boyd & Joplin, P.C.
P.O. Box 1210
McKinney, Texas 75070

OR2010-08723

Dear Mr. Graham:

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# 385700.

The Mansfield Independent School District (the "district"), which you represent, received a request for information pertaining to case number 081147, involving a September 12, 2008 incident at a specified location. You state the district has released or will release some of the responsive information to the requestor. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.135 of the Government Code. You also state the district notified individuals whose information is at issue of the request and of their right to submit arguments to this office as to why the requested information should not be released. Gov't Code § 552.304 (interested party may submit comments stating why the information should or should not be released). We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the district has redacted student-identifying information in the submitted incident report pursuant to the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code. However, FERPA is not applicable to law enforcement records maintained by the district's police department (the "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. The submitted incident report consists of law enforcement records prepared by the department. Thus, the submitted incident report is not subject to FERPA, and no portion of it may be withheld on that basis.

Section 552.108(a)(2) 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 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[.]” Gov’t Code § 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 deferred adjudication. 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). You explain the investigation of case number 081147 has concluded, and that the investigation did not result in a conviction or deferred adjudication. Based on your representation and our review, we agree section 552.108(a)(2) is applicable to this information.

As you acknowledge, 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 information held to be public in *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). You claim because case number 081147 did not result in an arrest, the submitted report does not contain basic information. However, the question of whether basic information exists is not dependant on whether an offense ended in arrest. *See generally* Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information in an offense report deemed public by *Houston Chronicle*). Although it may not be withheld under section 552.108, basic information may be withheld if it is excepted from disclosure by another exemption in the Act. You claim the identities of the victim(s) and witnesses must be withheld under sections 552.101 and 552.135 of the Government Code. Basic information in an offense report does not, however, include the identities of victims or witnesses, but does include the identity of the complainant. *Id.* at 4. Thus, the identities of the victim(s) and witnesses may be withheld under section 552.108(a)(2), and we will consider your arguments to withhold the complainant’s identity under sections 552.101 and 552.135.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. The common-law informer’s privilege, incorporated into the Act by section 552.101, has long been recognized by Texas courts. *See Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969); *Hawthorne v. State*, 10 S.W.2d 724, 725 (Tex. Crim. App. 1928). This privilege protects from disclosure the identities of persons who report activities over which the governmental body has criminal or quasi-criminal law-enforcement authority, provided that the subject of the information does not already know the informer’s identity. Open Records Decision Nos. 515 at 3 (1988), 208 at 1-2 (1978). You state the complainant reported a possible violation of the law to the department, which we understand to have the authority to enforce criminal law. The submitted

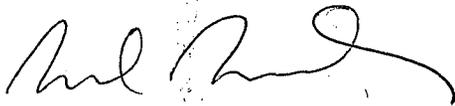
information does not indicate the suspects know the identity of the complainant. Thus, we conclude that the district may withhold the complainant's identity, which we marked, under section 552.101 of the Government Code in conjunction with the common-law informer's privilege.¹

In summary, with the exception of basic information, the district may withhold the submitted report under section 552.108(a)(2) of the Government Code. The district may withhold the information we marked under section 552.101 of the Government Code in conjunction with the informer's privilege from basic information. The remaining basic information must be released.

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,



Bob Davis
Assistant Attorney General
Open Records Division

RSD/eeg

Ref: ID# 385700

Enc. Submitted documents

cc: Requestor
(w/o enclosures)

¹As our ruling is dispositive for this information, we need not address your remaining argument against its disclosure.