



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 12, 2010

Ms. Debra L. Goetz
Atlas & Hall, L.L.P.
For McAllen Independent School District
P.O. Box 3725
McAllen, Texas 78502-3725

OR2010-17145

Dear Ms. Goetz:

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# 400222.

The McAllen Independent School District (the "district"), which you represent, received four requests for information pertaining to a specified incident, including video footage and financial records detailing expenses incurred by the district in challenging a grievance filed that relates to the incident. Next, we note the district has not submitted the requested video footage because it contains student-identifying information, which you assert is subject to the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code.¹ You claim that the submitted information is excepted from disclosure

¹The United States Department of Education Family Policy Compliance Office (the "DOE") has informed this office that 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 purpose of our review in the open records ruling process under the Act. The DOE has determined that FERPA determinations must be made by the educational authority in possession of the education records. We have posted a copy of the letter from the DOE to this office on the Attorney General's website: <http://www.oag.state.tx.us/open/20060725usdoe.pdf>.

under section 552.108 of the Government Code.² We have considered the exception you claim and reviewed the submitted information.

Initially, we note you have not submitted information responsive to the requested financial records portion of the request. To the extent this information existed at the time the district received the instant request for information, we assume that you have released it to the requestor. If such information has not been released, then you must release it at this time. See Gov't Code §§ 552.301, .302.

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 the governmental body seeks to withhold. See *id.* § 552.301(e)(1)(A). You state the requested information pertains to an investigation into an alleged assault conducted by the district's police department that did not result in conviction or deferred adjudication. Based on this representation and our review, we conclude section 552.108(a)(2) is applicable to the submitted information.

However, section 552.108 does not except 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*. See 531 S.W.2d at 186-88; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Accordingly, except for basic information, the district may withhold the submitted information under section 552.108(a)(2) 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,

²Although you initially raised section 552.107 of the Government Code, you did not submit to this office written comments stating the reasons why this section would allow the information to be withheld. Thus, the district has waived its claims under section 552.107. See Gov't Code § 552.301(e) (governmental body must provide comments explaining why exceptions raised should apply to information requested); see also Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions in general).

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 'Vanessa Burgess', written over a horizontal line.

Vanessa Burgess
Assistant Attorney General
Open Records Division

VB/dls

Ref: ID# 400222

Enc. Submitted documents

c: Requestors
(w/o enclosures)