



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 10, 2011

Mr. Andrew B. Thompson
Assistant General Counsel
Corpus Christi Independent School District
P.O. Box 110
Corpus Christi, Texas 78403-0110

OR2011-08260

Dear Mr. Thompson:

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# 422124.

The Corpus Christi Independent School District (the "district") received a request for information relating to a specified dog attack. You claim the requested information is excepted from disclosure under sections 552.103, 552.108, and 552.114 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

The district informs us it has redacted student-identifying information from the submitted records pursuant to the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code. FERPA provides that an educational agency or institution may not release personally identifiable information (other than directory information) contained in a student's education records to anyone but certain enumerated federal, state, and local officials and institutions, unless otherwise authorized by the student's parent. See 20 U.S.C. § 1232g(b)(1). 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 consent, unredacted, personally identifiable information contained in education records for

¹Although you additionally assert section 552.026, we note that this section is not an exception to disclosure under the Act.

the purpose of our review in the open records ruling process under the Act.² However, FERPA is not applicable to records maintained by a law enforcement unit of the educational agency or institution that were created by that law enforcement unit for the purpose of law enforcement. 20 U.S.C. § 1232g(a)(4)(B)(ii); 34 C.F.R. §§ 99.3, 99.8(b); *see U.S. v. Miami Univ.*, 294 F.3d 797, 814 (6th Cir. 2002). You inform us the submitted information consists of law enforcement records related to an investigation conducted by the district's police department and that are maintained by the department. Thus, this information is not subject to FERPA and the district may not withhold any portion of the submitted law enforcement records on that ground.

You assert the student identifying information in the submitted law enforcement records is also excepted from disclosure under section 552.114 of the Government Code. Section 552.114 excepts from disclosure student records "at an educational institution funded wholly or partly by state revenue." Gov't Code § 552.114(a). This office applies the same analysis under section 552.114 and FERPA. *See, e.g.,* Open Records Decision No. 539 at 4-5 (1990) (information subject to FERPA was excepted from disclosure under former section 552.114). However, a school district's law enforcement records are not "student records" subject to section 552.114. *See* Open Records Decision No. 612 at 2 (1992). Accordingly, the district may not withhold the student identifying information at issue under section 552.114.

You assert the submitted information is excepted from disclosure under section 552.103 of the Government Code, which provides in part as follows:

(a) Information is excepted from [required public disclosure] if it is information relating to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party.

(c) Information relating to litigation involving a governmental body or an officer or employee of a governmental body is excepted from disclosure under Subsection (a) only if the litigation is pending or reasonably anticipated on the date that the requestor applies to the officer for public information for access to or duplication of the information.

Gov't Code § 552.103(a), (c). The governmental body has the burden of providing relevant facts and documents to show the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated on the date the governmental body received the request for

²A copy of this letter may be found on the Office of the Attorney General's website: http://www.oag.state.tx.us/opinopen/og_resources.shtml.

information and (2) the information at issue is related to that litigation. *Univ. of Tex. Law Sch. v. Tex. Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.—Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.—Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). The governmental body must meet both prongs of this test for information to be excepted from disclosure under section 552.103(a).

The question of whether litigation is reasonably anticipated must be determined on a case-by-case basis. *See* Open Records Decision No. 452 at 4 (1986). To demonstrate that litigation is reasonably anticipated, the governmental body must furnish concrete evidence that litigation involving a specific matter is realistically contemplated and is more than mere conjecture. *Id.* Concrete evidence to support a claim that litigation is reasonably anticipated may include, for example, the governmental body's receipt of a letter containing a specific threat to sue the governmental body from an attorney for a potential opposing party.³ Open Records Decision No. 555 (1990); *see* Open Records Decision No. 518 at 5 (1989) (litigation must be "realistically contemplated"). On the other hand, this office has determined if an individual publicly threatens to bring suit against a governmental body, but does not actually take objective steps toward filing suit, litigation is not reasonably anticipated. *See* Open Records Decision No. 331 (1982).

The submitted information pertains to a dog bite incident on a district campus. You assert the district reasonably anticipates litigation because "[t]he public information request is on law firm letterhead" and the information requested relates to the incident. However, upon review, we find you have not furnished concrete evidence that litigation naming the school district as a party and the dog bite incident is realistically contemplated and is more than mere conjecture. Thus, we find you have not established the district reasonably anticipated litigation when it received the request for information. Accordingly, the district may not withhold the requested information under section 552.103.

You also assert the submitted information is excepted from disclosure under section 552.108 of the Government Code. 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[.]" 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* Gov't Code §§ 552.108(a)(1), 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). Although the submitted information consists of law enforcement records of the district's police department, you inform us "it is unclear whether any criminal or other formal charges

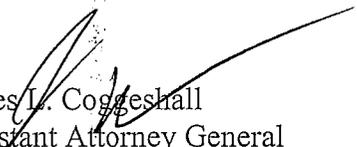
³In addition, this office has concluded litigation was reasonably anticipated when the potential opposing party took the following objective steps toward litigation: filed a complaint with the Equal Employment Opportunity Commission, *see* Open Records Decision No. 336 (1982); hired an attorney who made a demand for disputed payments and threatened to sue if the payments were not made promptly, *see* Open Records Decision No. 346 (1982); and threatened to sue on several occasions and hired an attorney, *see* Open Records Decision No. 288 (1981).

will follow from the incident in question[.]” Thus, you do not state the information relates to an active or pending criminal investigation conducted by the district’s police department. *See* Gov’t Code § 552.108(a)(1). You state “the City of Corpus Christi’s Animal Control Department became involved in relation to the incident[.]” Thus, you argue the submitted information is excepted from disclosure under section 552.108(a)(1) because its release “could or would allow for interference with the detection, investigation, or prosecution of a criminal offense and/or municipal code violation” and “would or could interfere with the prospective prosecution of this case.” However, you do not inform us the Animal Control Department of the City of Corpus Christi is conducting a criminal investigation of this matter. You also do not inform us that a law enforcement agency of the City of Corpus Christi or prosecutor objects to the release of the submitted information because its release would interfere with the detection, investigation, or prosecution of crime. *See id.* Therefore, upon review, we find you have not established the submitted information is excepted from disclosure under section 552.108(a)(1) of the Government Code. Accordingly, the district must release the requested information in its entirety to the requestor.

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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/eb

Ref: ID# 422124

Enc. Submitted documents

c: Requestor
(w/o enclosures)