



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 25, 2011

Ms. Leticia D. McGowan  
School Attorney  
Dallas Independent School District  
3700 Ross Avenue  
Dallas, Texas 75204

OR2011-12371

Dear Ms. McGowan:

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# 428092 (DISD ORR# 10353 and ORR# 10369).

The Dallas Independent School District (the "district") received two requests for information from separate requestors. The first requestor asks for an Office of Professional Responsibility report concerning a named individual. The second requestor asks for seven categories of documents related to his client, including her personnel records. You state the district has released the personnel records to the second requestor. You claim the remaining requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the United States Department of Education Family Policy Compliance Office (the "DOE") has informed this office the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232g, 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.<sup>1</sup> Consequently, state and local educational authorities that receive a request for education records from a member of the public under the Act must not submit education records to this office in unredacted form, that is, in a form in which "personally identifiable information" is disclosed. *See* 34 C.F.R. § 99.3 (defining "personally

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<sup>1</sup>A 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>.

identifiable information”). The submitted information includes unredacted education records. Because our office is prohibited from reviewing these records to determine whether appropriate redactions under FERPA have been made, we will not address the applicability of FERPA to any of the submitted records. Such determinations under FERPA must be made by the educational authority in possession of such records.<sup>2</sup> We will, however, address the applicability of the claimed exceptions to the submitted information.

Next, we note a portion of the submitted information is subject to required public disclosure under section 552.022 of the Government Code, which provides in relevant part:

(a) . . . the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

(17) information that is also contained in a public court record[.]

Gov’t Code § 552.022(a)(17). Upon review, we find the information we have marked has been filed with a court. This information is expressly public under section 552.022(a)(17) and must be released unless expressly confidential under other law. *See id.* You raise section 552.108 of the Government Code for this information; however, section 552.108 is a discretionary exception that protects a governmental body’s interests and may be waived. *See Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 177 at 3 (1977) (governmental body may waive statutory predecessor to section 552.108).* As such, section 552.108 does not constitute other law that makes information expressly confidential for the purposes of section 552.022. Therefore, the district may not withhold the information we have marked under section 552.108 of the Government Code. As you raise no other exceptions for the information we have marked, it must be released.

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[.]” Gov’t Code § 552.108(a)(1). 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). By its terms, section 552.108 applies only to a law enforcement agency or a prosecutor. A school district is not a law enforcement agency. However, you explain the district employs commissioned peace officers with the authority to enforce criminal provisions of state law. You also explain the remaining information relates to an ongoing criminal investigation into fraud and falsification of government documents, and the investigation is being conducted by the

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<sup>2</sup>In the future, if the district does obtain parental consent to submit unredacted education records and the district seeks a ruling from this office on the proper redaction of those education records in compliance with FERPA, we will rule accordingly.

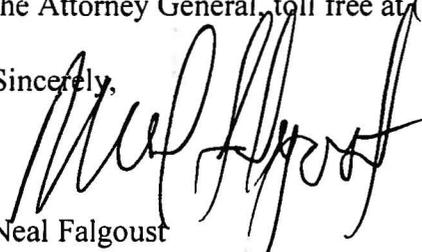
district's police department and the Dallas County District Attorney, and both object to the release of the information at issue. You state the release of this information would interfere with the investigation and prosecution of a crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref'd n.r.e.*, 536 S.W.2d 559 (Tex. 1976). Based on your representations and our review, we agree the district may withhold the remaining information under section 552.108(a)(1) of the Government Code.<sup>3</sup>

In summary, this ruling does not address the applicability of FERPA to the submitted information. The district must release the information we have marked under section 552.022(a)(17) of the Government Code. The district may withhold the remaining 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](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,



Neal Falgoust  
Assistant Attorney General  
Open Records Division

NF/agn

Ref: ID# 428092

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>3</sup>As our ruling is dispositive, we do not address your remaining argument against disclosure under section 552.101 of the Government Code.