



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 28, 2012

Mr. Scott McDonald
O'Hanlon, McCollom & Demerath
808 West Avenue
Austin, Texas 78701

OR2012-03079

Dear Mr. McDonald:

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# 447598.

The Lancaster Independent School District (the "district"), which you represent, received a request for information pertaining to the requestor's child and a specified police investigation. You state the district is releasing most of the requested information. You claim that the submitted information is excepted from disclosure under sections 552.108 and 552.135 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

The United States Department of Education Family Policy Compliance Office (the "DOE") has informed this office that the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code, 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.¹ 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.

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>.

§ 99.3 (defining “personally identifiable information”). In this instance, you have submitted redacted and unredacted education records in Exhibit 6, as well as handwritten student statements, for our review. *See* Open Records Decision No. 224 (1979) (student’s handwritten comments protected under FERPA because they would make identity of student easily traceable through handwriting, style of expression, or particular incidents related in the comments). We note that FERPA is generally not applicable to law enforcement records maintained by the district’s police department (the “department”) for law enforcement purposes, such as the information in Exhibit 4. 20 U.S.C. § 1232g(a)(4)(B)(ii); 34 C.F.R. §§ 99.3 (defining “education record”), .8. Because our office is prohibited from reviewing these education records to determine whether appropriate redactions under FERPA have been made, we will not address the applicability of FERPA to any of the submitted documents, other than to note parents and their legal representatives have a right of access to their own child’s education records. *See* 20 U.S.C. § 1232g(a)(1)(A); 34 C.F.R. § 99.3. Such determinations under FERPA must be made by the educational authority in possession of the education records.² We will, however, address the applicability of the district’s claimed exception under section 552.108 for the law enforcement records in Exhibit 4 and section 552.135 for the information you marked in Exhibit 6.

Section 552.108(a) 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[.]”³ Gov’t Code § 552.108(a)(1). A governmental body claiming section 552.108(a)(1) must reasonably explain how and why release of the requested information would interfere with the detection, investigation, or prosecution of crime. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state, and provide a representation from the department stating, the information in Exhibit 4 pertains to a pending criminal investigation by the department. Based upon these representations and our review, we conclude that release of the information in Exhibit 4 would 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) (court delineates law enforcement interests that are present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, section 552.108(a)(1) is applicable to the information in Exhibit 4.

²In the future, if the district does obtain parental or an adult student’s 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.

³Although you cite to section 552.108(a)(2) of the Government Code in your brief, the substance of your arguments and the submitted representation from the department indicate you are asserting a claim under section 552.108(a)(1) of the Government Code.

We note, however, 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). Basic information refers to the information held to be public in *Houston Chronicle*. See 531 S.W.2d at 186-88; Open Records Decision No. 127 (1976) (summarizing the types of information considered to be basic information). Thus, with the exception of the basic front page offense and arrest information, the district may withhold the information in Exhibit 4 under section 552.108(a)(1) of the Government Code.

Section 552.135 of the Government Code provides in part:

(a) “Informer” means a student or former student or an employee or former employee of a school district who has furnished a report of another person’s or persons’ possible violation of criminal, civil, or regulatory law to the school district or the proper regulatory enforcement authority.

(b) An informer’s name or information that would substantially reveal the identity of an informer is excepted from [required public disclosure].

(c) Subsection (b) does not apply:

(1) if the informer is a student or former student, and the student or former student, or the legal guardian, or spouse of the student or former student consents to disclosure of the student’s or former student’s name; or

(2) if the informer is an employee or former employee who consents to disclosure of the employee’s or former employee’s name; or

(3) if the informer planned, initiated, or participated in the possible violation.

Gov’t Code § 552.135(a)-(c). We note the legislature limited the protection of section 552.135 to the identity of a person who reports a possible violation of civil, criminal, or regulatory law. Thus, section 552.135 protects the identity of an informer but does not protect witness information or statements. We note this section does not protect the identity of an individual who planned, initiated, or participated in a possible violation of law. See *id.* § 552.135(c)(3). In this instance, you claim the information you have marked in Exhibit 6 reveals the identities of informers. Upon review, we find you have failed to demonstrate this information identifies individuals who reported possible violations of the law. Thus, the district may not withhold any of this information under section 552.135 of the Government Code.

In summary, with the exception of basic information, the district may withhold Exhibit 4 under section 552.108(a)(1) of the Government Code. The district must release the remaining information.⁴

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,



Lindsay E. Hale
Assistant Attorney General
Open Records Division

LEH/ag

Ref: ID# 447598

Enc. Submitted documents

c: Requestor
(w/o enclosures)

⁴We note the requestor has a right of access to her child's private information and social security number. See Gov't Code § 552.023(a) (person or person's authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and is protected from public disclosure by laws intended to protect person's privacy interests). We note section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. *Id.* § 552.147(b). Thus, if the district receives another request for this same information from a person who does not have such a right of access, section 552.147(b) authorizes the district to redact the requestor's child's social security number. However, because the requestor's child's private information is confidential with respect to the general public, if the district receives another request for this information from an individual without such a right of access, the district must again seek a ruling from this office in regard to that information.