



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 23, 2012

Mr. S. Anthony Safi
Mounce, Green, Myers, Safi, Paxson & Galatzan, P.C.
P.O. Box 1977
El Paso, Texas 79999-1977

OR2012-05767

Dear Mr. Safi:

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# 451249.

The El Paso Independent School District (the "district"), which you represent, received a request for a specified video recording. You claim the requested information is excepted from disclosure under sections 552.101, 552.108, 552.114, and 552.135 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

You assert the submitted video recording is excepted from disclosure under the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code and section 552.114 of the Government Code. *See* Gov't Code §§ 552.026 (incorporating FERPA into the Act), .114 (excepting from disclosure "student records"). However, FERPA is not applicable to law enforcement records maintained by the district's police department for law enforcement purposes. *See* 20 U.S.C. § 1232g(a)(4)(B)(ii); 34 C.F.R. §§ 99.3, .8. You inform us the submitted video recording consists of a law enforcement record held by the district's police department for a law enforcement purpose. Thus, the submitted information is not subject to FERPA, and no portion of it may be withheld on that basis. Accordingly, we also do not address your argument under section 552.114 of the Government Code. Open Records Decision No. 539 (1990) (determining the same analysis applies under section 552.114 of the Government Code and FERPA). Likewise, the district may not withhold any of the information at issue under FERPA or section 552.114 of the Government Code. However, we will consider your remaining arguments against disclosure of the submitted information.

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 . . . 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 this exception is applicable to the information at issue. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the submitted video recording relates to a pending criminal investigation with the district’s police department. Based on your representations and our review, we find that release of the submitted information 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). Accordingly, the district may withhold the submitted information under section 552.108(a)(1) of the Government Code. As our ruling is dispositive, we do not address your remaining argument against disclosure.

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,



Amy L.S. Shipp
Assistant Attorney General
Open Records Division

ALS/ag

Ref: ID# 451249

Enc. Submitted documents

c: Requestor
(w/o enclosures)