



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 30, 2012

Mr. Ricardo Morado  
Attorney for Rio Hondo Independent School District  
Roerig, Oliveira & Fisher, L.L.P.  
855 West Price Road, Suite 9  
Brownsville, Texas 78520-8786

OR2012-11835

Dear Mr. Morado:

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# 464944.

The Rio Hondo Independent School District (the "district") received a request for videotapes, the district's police department's investigative file, and physical evidence pertaining to a specified incident. You state you have withheld the requested video recording pursuant to the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code.<sup>1</sup> You claim the submitted investigative file is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we address the request for physical evidence. The Act applies to "public information," which is defined as information collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business by a governmental

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<sup>1</sup>The United States Department of Education Family Policy Compliance Office (the "DOE") has informed this office that FERPA does not permit a state educational agency or institution to disclose to this office, without parental or an adult student's consent, unredacted, personally identifiable information contained in education records for the purpose of our review in the open records ruling process under the Act. See 34 C.F.R. § 99.3 (defining "personally identifiable information"). The DOE has determined that FERPA determinations must be made by the educational institution from which the education records were obtained. A copy of the DOE's letter to this office may be found on the Office of the Attorney General's website: <http://www.oag.state.tx.us/open/20060725usdoe.pdf>.

body or for a governmental body, and the governmental body owns the information or has a right of access to it. Gov't Code § 552.002. This office has ruled tangible physical items are not "information" as that term is contemplated under the Act. *See, e.g.*, Open Records Decision No. 581 (1990). Thus, any responsive tangible physical evidence maintained by the district is not public information as that term is defined in section 552.002 of the Government Code. Consequently, we find the district is not required to release such tangible evidence to the requestor under the Act. *See* Gov't Code §§ 552.002, .021.

You claim the submitted investigative file is excepted from disclosure under section 552.108(a)(1) of the Government Code. Section 552.108(a)(1) 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). Generally, a governmental body claiming section 552.108(a)(1) 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). You state the submitted investigative files relates to a pending criminal investigation by the district's police department. Based upon your representation and our review, we conclude that the release of the information at issue 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) generally is applicable to the information at issue.

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). Section 552.108(c) refers to the basic front-page information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976), and includes a detailed description of the offense. *See* 531 S.W.2d at 186-88. Therefore, except for basic information, the district may withhold the submitted investigative file under section 552.108(a)(1) of the Government Code.<sup>2</sup>

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.

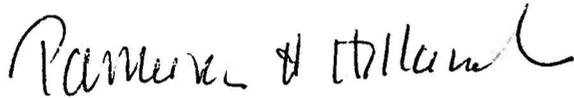
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and

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<sup>2</sup>As our ruling is dispositive, we need not address your argument under section 552.108(b)(1).

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,



Tamara H. Holland  
Assistant Attorney General  
Open Records Division

THH/ag

Ref: ID# 464944

Enc. Submitted documents

c: Requestor  
(w/o enclosures)