



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 26, 2013

Mr. Orlando "Jay" Juarez, Jr.  
Counsel for the United Independent School District  
Escamilla, Poneck & Cruz, L.L.P.  
216 West Village Boulevard, Suite 202  
Laredo, Texas 78041

OR2013-06929

Dear Mr. Juarez:

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# 485313.

The United Independent School District (the "district"), which you represent, received a request for information related to a specified incident. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.114, and 552.135 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted information.

Initially, you claim the submitted information is excepted from disclosure under the Family Educational Rights and Privacy Act of 1974 ("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 (the "department") for law enforcement purposes. *See* 20 U.S.C. § 1232g(a)(4)(B)(ii); 34 C.F.R. §§ 99.3, .8. We note, and you acknowledge, the submitted

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<sup>1</sup>Although you also claim section 552.026 of the Government Code, we note section 552.026 is not an exception to disclosure. Rather, section 552.026 provides the Act does not require the release of information contained in education records except in conformity with the Family Educational Rights and Privacy Act of 1974. Gov't Code § 552.026.

information consists of information created for and maintained by the 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 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). Therefore, the district may not withhold any of the submitted information under FERPA or section 552.114 of the Government Code. However, we will consider your remaining arguments against disclosure of the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses information other statutes make confidential, such as section 58.007 of the Family Code. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997, are confidential under section 58.007(c), which reads as follows:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

(1) if maintained on paper or microfilm, kept separate from adult files and records;

(2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and

(3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapters B, D, and E.

...

(e) Law enforcement records and files concerning a child may be inspected or copied by a juvenile justice agency as that term is defined by Section 58.101, a criminal justice agency as that term is defined by Section 411.082, Government Code, the child, and the child's parent or guardian.

...

(j) Before a child or a child's parent or guardian may inspect or copy a record or file concerning the child under Subsection (e), the custodian of the record or file shall redact:

...

(2) any information that is excepted from required disclosure under [the Act], or other law.

Fam. Code § 58.007(c), (e), (j)(2). For purposes of section 58.007(c), "child" means a person who is ten years of age or older and under seventeen years of age. *See id.* § 51.02(2). Upon review, we find the submitted information consists of a law enforcement record that involves alleged juvenile delinquent conduct that occurred after September 1, 1997. *See id.* § 51.03 (defining "delinquent conduct" for purposes of Fam. Code § 58.007). Thus, the submitted information is subject to section 58.007(c) of the Family Code. We note the requestor may be a parent of one of the juvenile offenders listed in the submitted information. If the requestor is not a parent or legal guardian of one of the juvenile offenders listed in the submitted information, then the submitted information must be withheld under section 552.101 in conjunction with section 58.007(c). However, if the requestor is a parent or legal guardian of one of the juvenile offenders, she may inspect or copy any law enforcement records concerning her child under section 58.007(e). *Id.* § 58.007(e). However, section 58.007(j) provides information subject to any other exception to disclosure under the Act or other law must be redacted. *See id.* § 58.007(j)(2). In this instance, we address your remaining arguments against disclosure.

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(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 information pertains to an active criminal case of the department. Accordingly, we conclude 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, the district may withhold the submitted information under section 552.108(a)(1) of the Government Code.<sup>2</sup>

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<sup>2</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure.

In summary, if the requestor is not a parent or legal guardian of one of the juvenile offenders listed in the submitted information, then the submitted information must be withheld under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. If the requestor is a parent or legal guardian of one of the juvenile offenders, the district may withhold the submitted 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,

A handwritten signature in cursive script, appearing to read "Jennifer Burnett", followed by a horizontal line extending to the right.

Jennifer Burnett  
Assistant Attorney General  
Open Records Division

JB/tch

Ref: ID# 485313

Enc. Submitted documents

c: Requestor  
(w/o enclosures)