



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 12, 2013

Mr. Orlando Juarez, Jr.
Escamilla, Poneck & Cruz, L.L.P.
216 West Village Boulevard, Suite 202
Laredo, Texas 78041

OR2013-09900

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# 489904.

The United Independent School District (the "district"), which you represent, received a request for witness statements, police reports, and any other documentation pertaining 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.¹ We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note you have redacted information from the submitted documents. Pursuant to section 552.301 of the Government Code, a governmental body that seeks to withhold requested information must submit to this office a copy of the information, labeled to indicate which exceptions apply to which parts of the copy, unless the governmental body has received a previous determination for the information at issue. Gov't Code § 552.301(a), (e)(1)(D). You state you have redacted some information pursuant to the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232g. However, we note FERPA is not applicable to law enforcement records maintained by the district's police

¹Although 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. Additionally, although you raise section 552.206 of the Government Code, we note this section does not exist.

department (the “department”) that were created by the department for law enforcement purposes. *See* 20 U.S.C. § 1232g(a)(4)(B)(ii); 34 C.F.R. §§ 99.3, .8. Upon review, we find, and you acknowledge, the information at issue constitutes law enforcement records created and maintained by the department for law enforcement purposes. Thus, the submitted information is not subject to FERPA, and no portion of it may be withheld on that basis. Likewise, we do not address your arguments under section 552.114 of the Government Code and the district may not withhold any of the submitted information on this basis. *See* Gov’t Code §§ 552.026 (incorporating FERPA into the Act), .114 (excepting from disclosure “student records”); Open Records Decision No. 539 (1990) (determining the same analysis applies under section 552.114 and FERPA).

In addition to the student identifying information you have redacted, you have redacted the home address, home telephone number, and date of birth of a district employee. Section 552.024 of the Government Code authorizes a governmental body to redact from public release a current or former employee’s home address and telephone number subject to section 552.117(a)(1) of the Government Code without the necessity of requesting a decision from this office under the Act, if the employee or official timely elected to withhold such information. *See* Gov’t Code §§ 552.024(a)-(c), .117(a)(1). However, section 552.117 applies only to records that a governmental body is holding in an employment capacity. The submitted information consists of law enforcement records maintained by the department in a law enforcement capacity and is not held by the district as an employer. Therefore, we find section 552.117(a)(1) of the Government Code does not apply in this situation, and the district may not withhold the home address and home telephone number you have redacted on that basis. You do not assert, nor does our review of the records indicate, you have been authorized to withhold any of the redacted information without seeking a ruling from this office. *See id.* § 552.301(a); Open Records Decision No. 673 (2001). Thus, information must be submitted in a manner that enables this office to determine whether the information comes within the scope of an exception to disclosure. In this instance, we can discern the nature of the redacted information; thus, being deprived of that information does not inhibit our ability to make a ruling. In the future, however, the district should refrain from redacting any information it is not authorized to withhold in seeking an open records ruling. Failure to do so may result in the presumption the redacted information is public. *See* Gov’t Code § 552.302.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” *Id.* § 552.101. This section encompasses information protected by other statutes such as section 58.007 of the Family Code, which provides in pertinent part 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.

Fam. Code § 58.007(c). Juvenile law enforcement records relating to delinquent conduct or conduct indicating a need for supervision that occurred on or after September 1, 1997, are confidential under section 58.007. *See id.* § 51.03(a) (defining “delinquent conduct”). 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 at the time of the conduct. *See id.* § 51.02(2). The submitted information involves delinquent conduct that occurred after September 1, 1997. However, we are unable to determine the ages of the juvenile offenders in the information at issue. Accordingly, we must rule conditionally. It does not appear that any of the exceptions to confidentiality under section 58.007 apply in this instance. Thus, to the extent any of the offenders identified in the information at issue were ten years of age or older and under seventeen years of age at the time of the incident at issue, the submitted information is confidential under section 58.007(c) of the Family Code and must be withheld in its entirety under section 552.101 of the Government Code. However, if none of the offenders at issue were ten years of age or older and under seventeen years of age at the time of the incident, the submitted information is not confidential pursuant to section 58.007(c) and may not be withheld under section 552.101 on that basis. In that event, we consider your remaining arguments.

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[.]” 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 the submitted information pertains to a pending criminal investigation conducted by the department. Based upon your representation and our review, we conclude 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

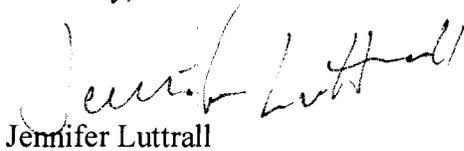
S.W.2d 559 (Tex. 1976). Thus, the district may withhold the submitted information under section 552.108(a)(1) of the Government Code.²

In summary, to the extent any of the offenders identified in the information at issue were ten years of age or older and under seventeen years of age at the time of the incident at issue, the district must withhold the submitted information in its entirety under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. However, if none of the offenders at issue were ten years of age or older and under seventeen years of age at the time of the incident, 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, 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,



Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/som

Ref: ID# 489904

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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