



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 10, 2013

Ms. Melanie L. Hollmann
Atkins, Hollmann, Jones, Peacock, Lewis & Lyon, P.C.
3800 East 42nd Street, Suite 500
Odessa, Texas 79762

OR2013-11719

Dear Ms. Hollmann:

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# 494024.

The Ector County Independent School District (the "district"), which you represent, received a request for the investigation and findings by the district's Police Department (the "department") pertaining to two named employees, including their personnel files. The district claims the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the claimed exceptions and reviewed the submitted information.

Initially, you inform us the district has redacted student-identifying information in the submitted information pursuant to the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code.¹ However, FERPA is not applicable to law enforcement records maintained by the department that were created by the department for a law enforcement purpose. *See* 20 U.S.C. § 1232g(a)(4)(B)(ii); 34 C.F.R.

¹The United States Department of Education Family Policy Compliance Office (the "DOE") has informed this office that FERPA 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. The DOE has determined that FERPA determinations must be made by the educational authority in possession of the education records. We have posted a copy of the letter from the DOE to this office on the Attorney General's website: <http://www.oag.state.tx.us/open/20060725usdoe.pdf>.

§§ 99.3, 99.8. The submitted information includes incident reports that relate to criminal investigations by the department. Thus, these records are not subject to FERPA, and no portion of these records may be withheld on that basis. Because we are able to discern the nature of the redacted information, we are not prevented from determining whether that information falls within the scope of the district's exceptions to disclosure. Accordingly, we will address the district's arguments with respect to the information at issue, including the redacted information. Nevertheless, we caution the district that a failure to provide this office with requested information generally deprives us of the ability to determine whether information may be withheld and leaves this office with no alternative other than ordering the redacted information to be released. *See* Gov't Code § 552.301(e)(1)(D) (governmental body must provide this office with copy of specific information requested or representative sample if information is voluminous).

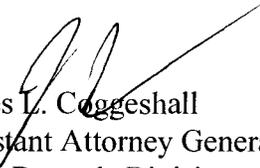
Section 552.108(a)(1) excepts from disclosure information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime if release of the information would interfere with the detection, investigation, or prosecution of crime. Gov't Code § 552.108(a)(1). Generally, a governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). Section 552.108 may be invoked by the proper custodian of information relating to an investigation or prosecution of criminal conduct. *See* Open Records Decision No. 474 at 4-5 (1987). Where a non-law-enforcement agency possesses information relating to a pending case of a law enforcement agency, the non-law-enforcement agency may withhold the information under section 552.108(a)(1) if it demonstrates the information relates to the pending case and this office is provided with a representation from the law enforcement entity that the law enforcement entity wishes to withhold the information. You have submitted representations from the department and the Ector County District Attorney's Office objecting to the release of the submitted information because it would interfere with ongoing criminal investigations. Based on your representations and our review of the submitted documents, we conclude the 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).²

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.

²As our ruling is dispositive, we do not address your other argument to withhold this information.

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/tch

Ref: ID# 494024

Enc. Submitted documents

c: Requestor
(w/o enclosures)