



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 7, 2014

Mr. Barry L. Macha  
General Counsel  
Office of the General Counsel  
Midwestern State University  
3410 Taft Boulevard  
Wichita Falls, Texas 76308-2099

OR2014-17877

Dear Mr. Macha:

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# 538544.

The Midwestern State University Police Department (the "department") received a request for information pertaining to a specified incident. You state you have released some information. You claim the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information. We have also received and considered comments from the requestor and interested third parties. *See* Gov't Code § 552.304 (permitting interested third party to submit to attorney general reasons why requested information should or should not be released).

Initially, we address your claim that the submitted information contains education records that must be withheld under the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232. These provisions apply only to student records in the custody of educational institutions and to records directly transferred from an educational institution to a third party. *See* 34 C.F.R. §§ 99.33(a)(2), 99.3 (defining "student"). The United States Department of Education Family Policy Compliance Office (the "DOE") has informed this office 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.<sup>1</sup> See 34 C.F.R. § 99.3 (defining “personally identifiable information”). However, we note FERPA is not applicable to law enforcement records maintained by a university’s police department for law enforcement purposes. See 20 U.S.C. § 1232g(a)(4)(B)(ii); 34 C.F.R. §§ 99.3, .8. The submitted information consists of an investigation conducted by the department. Further, you indicate this information is maintained by the department for law enforcement purposes. Accordingly, the submitted information constitutes law enforcement records created and maintained by the department for law enforcement purposes. As such, this information is not an education record subject to FERPA, and the department may not withhold any of the submitted information on that basis. However, we will address your remaining argument for this information.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that did not result in conviction or deferred adjudication. See Gov’t Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. See *id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state, and provide documentation demonstrating, the submitted information pertains to a concluded investigation that did not result in conviction or deferred adjudication. Based on your representation and our review, we agree section 552.108(a)(2) is applicable to the submitted information.

However, as you acknowledge, section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” *Id.* § 552.108(c). Section 552.108(c) refers to the basic 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). See also Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). We note basic information includes, among other items, an identification and description of the complainant and a detailed description of the offense, but does not include information related to a witness or to a suspect who was not arrested. See ORD 127. Accordingly, with the exception of basic information, the department may withhold the submitted information under section 552.108(a)(2) 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.

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<sup>1</sup>A copy of this letter may be found on the Office of the Attorney General’s website: <http://www.oag.state.tx.us/open/20060725usdoe.pdf>.

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](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,

A handwritten signature in black ink, appearing to read 'KJM', with a horizontal line extending to the right.

Kenny Moreland  
Assistant Attorney General  
Open Records Division

KJM/som

Ref: ID# 538544

Enc. Submitted documents

c: Requestor  
(w/o enclosures)