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ATTORNEY GENERAL OF TEXAS

February 8, 2016

Ms. Vanessa A. Gonzalez
Counsel for Baylor University
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Austin, Texas 78746

OR2016-02966

Dear Ms. Gonzalez:

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# 595217.

The Baylor Police Department (the "department"), which you represent, received a request for information pertaining to hate crimes occurring on campus in 2014 and sexual-assault cases that occurred on campus from 2012-2014. The department states it will release some of the requested information, but claims the submitted information is excepted from disclosure under sections 552.101, 552.103, and 552.108 of the Government Code. We have considered the claimed exceptions and reviewed the submitted information.

Initially, we note the requested sexual-assault cases, including the information you have submitted as Exhibit B1, were the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2015-24446 (2015). In its request for a ruling from this office regarding the previously requested information, the department submitted a number of offense reports in their entirety, with the exception of certain student-identifying information it redacted under the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code. In Open Records Letter No. 2015-24446, we determined, in part, FERPA was not applicable to any of the information at issue because it consisted of law enforcement records that were maintained and created by the department for a law enforcement purpose. The department now indicates it is withholding some of the reports in their entirety pursuant to FERPA, and some of the previously submitted reports were not provided to this office in this instance. *See* Gov't Code § 552.026 (incorporating FERPA into the Act); *see also id.* § 552.114 (excepting from disclosure "student records"); Open Records Decision No. 539 (1990) (determining same analysis applies under section 552.114 of Government Code and FERPA). We note the requested information, including the sexual-assault cases at issue, was created and is

maintained by the department for a law enforcement purpose. As previously discussed in Open Records Letter No. 2015-24446, although the United States Department of Education Family Policy Compliance Office 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, FERPA is not applicable to records that were created by a law enforcement unit of an educational agency or institution for a law enforcement purpose and that are maintained by the law enforcement unit. *See* 20 U.S.C. § 1232g(a)(4)(B)(ii); 34 C.F.R. §§ 99.3, .8. Accordingly, because the requested information is maintained by a law enforcement unit of an educational agency, this information does not constitute an education record subject to FERPA, and the department may not withhold the information at issue on that ground. Nevertheless, in Open Records Letter No. 2015-24446, we determined the department (1) may withhold some of the information at issue under section 552.108 of the Government Code, (2) must withhold some information under section 552.101 of the Government Code in conjunction with common-law privacy, and (3) must release the remaining requested information. We have no indication the law, facts, or circumstances on which the prior ruling was based have changed. Accordingly, the department must continue to rely on Open Records Letter No. 2015-24446 as a previous determination and withhold or release the requested sexual-assault cases, including Exhibit B1, in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

As determined above, because the requested information is maintained by a law enforcement unit of an educational agency, this information does not constitute an education record subject to FERPA, and the department may not withhold any of it on that ground. The department submitted Exhibit B2, which is an incident report pertaining to a hate crime, but did not provide this office with any other information pertaining to hate crimes. Therefore, to the extent any additional responsive information pertaining to hate crimes existed when the department received the request for information, the department must release such information to the requestor immediately. *See* Gov't Code §§ 552.006, .301, .302; Open Records Decision No. 664 (2000). If the department believes the information is confidential and may not lawfully be released, then it must challenge this ruling in court pursuant to section 552.324 of the Government Code.

The department asserts Exhibit B2 is excepted from disclosure under section 552.108(a)(2) of the Government Code, which excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the information at issue relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* §§ 552.108(a)(2), .301(e)(1)(A). The department asserts Exhibit B2 pertains to a case that concluded in a

result other than conviction or deferred adjudication. Therefore, we agree section 552.108(a)(2) is applicable to this information.

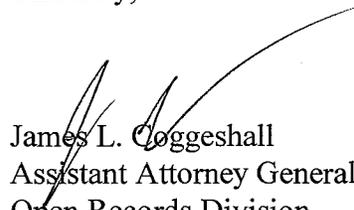
However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. See 531 S.W.2d at 186-88; Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Thus, with the exception of basic information, the department may withhold Exhibit B2 under section 552.108(a)(2) of the Government Code.¹

To summarize, the department must continue to rely on Open Records Letter No. 2015-24446 as a previous determination and withhold or release the requested sexual-assault cases, including Exhibit B1, in accordance with that ruling. With the exception of basic information, which the department must release, the department may withhold Exhibit B2 under section 552.108(a)(2) of the Government Code. To the extent any other responsive information pertaining to hate crimes existed when the department received the request for information, the department must release this information to the requestor in accordance with section 552.302 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.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/bhf

¹As our ruling is dispositive, we do not address the department's other arguments to withhold the submitted information, except to note basic information may not be withheld from public disclosure under section 552.103. See Open Records Decision No. 597 at 2-3 (1991).

Ref: ID# 595217

Enc. Submitted documents

c: Requestor
(w/o enclosures)