



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 16, 2015

Mr. George Haratsis
Counsel for the Texas Christian University Police Department
McDonald Sanders, P.C.
777 Main Street, Suite 1300
Fort Worth, Texas 76102-5317

OR2015-26416

Dear Mr. Haratsis:

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# 589112.

The Texas Christian University Police Department (the "department"), which you represent, received a request for a specified incident report and all assault or robbery reports during a specified time period. You claim the submitted information is not subject to the Act. In the alternative, you claim the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code.¹ We have considered the submitted arguments and reviewed the submitted information.

Initially, we note the 84th Legislature added section 51.212(f) of the Education Code, which reads as follows:

(f) A campus police department of a private institution of higher education is a law enforcement agency and a governmental body for purposes of [the

¹Although you raise section 552.026 of the Government Code, this section 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. See Gov't Code § 552.026.

Act], only with respect to information relating solely to law enforcement activities.

Educ. Code § 51.212(f). You inform us the department is a campus police department of a private institution of higher education. *See id.* §§ 51.212(e), 61.003. Thus, you acknowledge the department is a governmental body for purposes of the Act, and information maintained by the department is subject to disclosure under the Act, to the extent such information relates solely to law enforcement activities. You state police report numbers 15-1172 and 15-1240 are maintained by the department. However, you argue section 51.212(f) only applies to “incidents and law enforcement activities and related records occurring after [section 51.212(f)’s] effective date.” You state pursuant to section 311.022 of the Government Code, a statute is presumed to be prospective in its operation unless expressly made retrospective. Gov’t Code § 311.022. Section 51.212(f) of the Education Code went into effect on September 1, 2015. The department received the instant request on September 8, 2015, and sought a ruling from our office on September 22, 2015. Upon review, we find police report numbers 15-1172 and 15-1240 consist of records maintained by the department on or after the effective date of section 51.212(f) of the Education Code. Thus, applying section 51.212(f) to police report numbers 15-1172 and 15-1240 is a prospective application of the statute. Accordingly, pursuant to section 51.212(f), police report numbers 15-1172 and 15-1240 are subject to the Act to the extent such information relates solely to law enforcement activities, and the department must release the information at issue unless the department demonstrates the information falls within an exception to public disclosure under the Act. *See id.* §§ 552.006, .021, .301, .302. You acknowledge police report numbers 15-1172 and 15-1240 relate solely to law enforcement activities. Accordingly, we will address your claimed exceptions against disclosure of police report numbers 15-1172 and 15-1240.

You argue police report number 15-1339 does not relate “solely to law enforcement activities.” You state many of the duties of the department “fall outside the scope of official duties performed by traditional law enforcement officers.” You state the information at issue was created for use by the Office Campus Life – Deans Office and relates to the student “disciplinary process” of Texas Christian University. You argue police report number 15-1339 relates to the student’s status with Texas Christian University and not his status within the criminal justice system. However, the submitted information reflects police report number 15-1339 involves an investigation of possible criminal violations investigated by the department. *See Penal Code § 22.01 (assault).* Thus, upon review, we find police report number 15-1339 relates “solely to law enforcement activities.” *See id.* Therefore, we will also address your claimed exceptions against disclosure of police report number 15-1339.

We note some of the requested information was the subject of a previous request for a ruling, as a result of which this office issued Open Records Letter No. 2015-25764 (2015). In that ruling, we determined with the exception of basic information, the department may withhold police report number 15-1172 under section 552.108(a)(1) of the Government Code. We

have no indication the law, facts, or circumstances on which the prior ruling was based have changed. Thus, the department must continue to rely on Open Records Letter No. 2015-25764 as a previous determination and withhold or release the identical information at issue 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 a prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). However, we will consider your arguments for the submitted information not subject to the previous ruling.

Next, the department asserts the remaining information is excepted from disclosure under the Family Education Rights and Privacy Act (“FERPA”), section 1232g of title 20 of the United States Code. However, FERPA is not applicable to law enforcement records maintained by a law enforcement agency that were created 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 law enforcement records maintained or created by the department for law enforcement purposes. Thus, the information at issue is not subject to FERPA, and no portion of it may be withheld on that basis. *See* Gov’t Code §§ 552.026 (incorporating FERPA into Act), .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).

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 police report numbers 15-1240 and 15-1309 relate to ongoing investigations. Further, you have provided letters from detectives with the Fort Worth Police Department objecting to release of the reports at issue because their release would interfere with the investigation and prosecution of the cases. Based on your representations and our review, we find 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, section 552.108(a)(1) is applicable to police report numbers 15-1240 and 15-1309.

Section 552.108(a)(2) excepts from disclosure information concerning an investigation that concluded in a result other than 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.*; *see also id.* § 552.301(e)(1)(A). You state police report number 15-1339 relates to a case which was closed without any arrests or charges being filed. Thus, we find you have demonstrated report number 15-1339 pertains to an investigation that concluded in a result other than conviction or deferred adjudication. Accordingly, we find section 552.108(a)(2) is applicable to report number 15-1339.

However, section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” Gov’t Code § 552.108(c). Section 552.108(c) refers to the basic information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-88; *see also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). We note basic information includes, among other things, a detailed description of the offense. *See* ORD 127 at 3-4. In this instance, you seek to withhold the narrative portion of police report numbers 15-1240, 15-1309, and 15-1339 under section 552.108. The remaining portions of the reports at issue do not contain information sufficient to satisfy the requirement that a “detailed description of the offense” be released as basic information. *See id.* Accordingly, we determine the department must release sufficient portions of the narratives to encompass detailed descriptions of the offenses to satisfy the required release of basic information pursuant to *Houston Chronicle*. Accordingly, with the exception of basic information, the department may withhold police report numbers 15-1240 and 15-1309 under section 552.108(a)(1) of the Government Code and police report number 15-1339 under section 552.108(a)(2) of the Government Code.²

In summary, the department must continue to rely on Open Records Letter No. 2015-25764 as a previous determination and withhold or release the identical information at issue in accordance with that ruling. With the exception of basic information, the department may withhold police report numbers 15-1240 and 15-1309 under section 552.108(a)(1) of the Government Code and police report number 15-1339 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.

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

²As our ruling is dispositive, we need not address your remaining arguments against disclosure of the submitted information.

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 cursive script that reads "Cole Hutchison".

Cole Hutchison
Assistant Attorney General
Open Records Division

CH/bhf

Ref: ID# 589112

Enc. Submitted documents

c: Requestor
(w/o enclosures)