



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 17, 2016

Mr. Darin Darby
Counsel for San Antonio Independent School District
Escamilla & Poneck, L.L.P.
700 North St. Mary's Street, Suite 850
San Antonio, Texas 78205

OR2016-13844

Dear Mr. Darby:

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# 614811.

The San Antonio Independent School District (the "district"), which you represent, received five requests for information concerning a specified incident, personnel records concerning a named police officer, and the use of force policies for the district's police department. The district released information responsive to the request for the use of force policies. You claim the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.103, 552.108, 552.114, and 552.140 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

You argue some of the requested information is protected by the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232g. 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.¹ We understand the district's police department has custody of some of the information at issue. FERPA is not applicable to records created by a law enforcement unit of an educational agency or

¹A copy of this letter may be found on the Office of the Attorney General's website: <https://www.texasattorneygeneral.gov/files/og/20060725usdoe.pdf>.

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, any information in the custody of the district's police department is not encompassed by FERPA and none of it may be withheld on that basis. Such determinations under FERPA must be made by the district, so we will not address the applicability of FERPA to this information. Likewise, we do not address your argument under section 552.114 of the Government Code. *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 of the Government Code and FERPA). However, we will consider your other arguments against disclosure of the submitted information.

Some of the submitted information consists of completed employee evaluations. Section 552.022(a)(1) of the Government Code provides for the required disclosure of "a completed . . . evaluation . . . made of, for, or by a governmental body," unless it is excepted by section 552.108 of the Government Code or made confidential under the Act or other law. Gov't Code § 552.022(a)(1). Some of the submitted information consists of job descriptions. Section 552.022(a)(15) of the Government Code provides for the required disclosure of "information regarded as open to the public under an agency's policies," unless it is made confidential under the Act or other law. *See id.* § 552.022(a)(15). If the district regards the submitted job descriptions as open to the public, then that information is subject to section 552.022(a)(15). You raise section 552.103 for the completed employee evaluations and the job descriptions. However, section 552.103 does not make information confidential under the Act. *Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475–76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). Accordingly, the district may not withhold any of the completed employee evaluations under section 552.103 of the Government Code. If the district considers the job descriptions as open to the public, then it may not withhold that information under section 552.103 of the Government Code. Additionally, as to the job descriptions, section 552.108 of the Government Code does not make information confidential. Open Records Decision Nos. 663 at 5 (1999) (untimely request for decision resulted in waiver of discretionary exceptions), 177 (1977) (statutory predecessor to section 552.108 subject to waiver). Accordingly, if the job descriptions are considered open to the public under the district's policies, then the district may not withhold the job descriptions under section 552.108 of the Government Code. As you raise no other exceptions for the job descriptions, they must be released if the district considers them as open to the public under its policies. However, we will consider your assertion of sections 552.103 and 552.108 for the job descriptions if they are not considered to be open to the public under the district's policies and section 552.108 for the completed evaluations. Additionally, sections 552.101, 552.102, and 552.140 make information confidential, so we will also consider the applicability of those exceptions to all of the remaining information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't

Code § 552.101. Section 552.101 encompasses section 58.007 of the Family Code, which makes confidential juvenile law enforcement records relating to conduct by a child that occurred on or after September 1, 1997. Fam. Code § 58.007(c). The relevant portion of section 58.007 provides:

(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.

Id. § 58.007(c). *See also id.* § 51.02(2) (defining “child” as a person who is ten years of age or older and younger than seventeen years of age at time of reported conduct). Upon review, we find the submitted incident report and video recording involve delinquent conduct by a child that occurred after September 1, 1997. *See id.* § 51.03 (defining “delinquent conduct” for purposes of section 58.007). Further, it does not appear any of the exceptions in section 58.007 apply. Therefore, the submitted incident report and video recording are confidential under section 58.007(c) of the Family Code and the district must withhold them under section 552.101 of the Government Code.

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 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). We note section 552.108 generally is not applicable to purely administrative records that do not involve the investigation or prosecution of crime. *See City of Fort Worth v. Cornyn*, 86 S.W.3d 320 (Tex. App.—Austin 2002, no pet.). However, you state the remaining information relates to an active criminal investigation. You have provided a representation from the district’s police chief stating release of the information would interfere with the investigation and prosecution of a 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

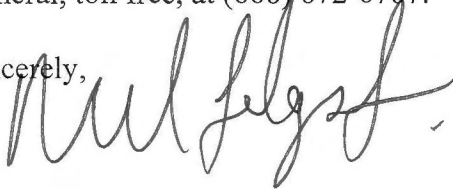
present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Based on these representations and our review, we conclude the district may withhold the remaining information under section 552.108(a)(1) of the Government Code.²

In summary, the district must release the job descriptions if they are considered open to the public under the district's policies. The district must withhold the incident report and video recording under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. The district may withhold the remaining 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.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,



Neal Falgoust
Assistant Attorney General
Open Records Division

NF/eb

Ref: ID# 614811

Enc. Submitted documents

c: 5 Requestors
(w/o enclosures)

²As our ruling is dispositive, we do not address your remaining arguments against disclosure.