



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

December 7, 2016

Ms. Vanessa A. Gonzalez  
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Building One, Suite 300  
Austin, Texas 78746

OR2016-27100

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# 636730.

The Baylor Police Department (the "department"), which you represent, received a request for security camera footage related to a specified incident. You state the department has withheld responsive information pursuant to the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code. You claim the requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim.

Initially, we address your claim that the requested video recording is an education record that must be withheld under FERPA. 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 or an adult student's 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> We note, and you acknowledge, 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. §§ 99.3, 99.8. However, you state the requested video recording was created by the Baylor University Information Technology Services Department (“Baylor ITS”). We, therefore, understand you to assert Baylor ITS is a component of Baylor University, an educational agency for the purposes of FERPA. Although the department is not an educational institution, you inform us the department obtained the video recording at issue from Baylor ITS during the course of its investigation of the specified incident. Accordingly, we understand the department to assert the video recording at issue is an education record that was created by an educational institution for the purposes of FERPA and is being used by the department in its investigation.

Because our office is prohibited from reviewing such records to determine whether appropriate redactions under FERPA have been made, we do not address the applicability of FERPA to the requested video recording. *See* 20 U.S.C. § 1232g(a)(1)(A). Such determinations under FERPA must be made by the educational authority in possession of the education records. However, we will consider the applicability of the exception you claim to the requested information.

Section 552.108(a) 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: (1) 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(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). You state, and provide documentation from the department’s police chief supporting, the requested information relates to an ongoing criminal investigation, and release of that information would interfere with the investigation and prosecution of the case. Based upon this representation, we conclude the release of the requested 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, section 552.108(a)(1) is applicable to the requested information. Accordingly, the department may withhold the requested information under section 552.108(a)(1) of the Government Code.

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

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](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,



Kieran Hillis  
Assistant Attorney General  
Open Records Division

KH/akg

Ref: ID# 636730

c: Requestor