



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 10, 2017

Ms. Vanessa A. Gonzalez
Counsel for the Southern Methodist University
Bickerstaff, Heath, Delgado, Acosta, L.L.P.
3711 South Mopac Expressway
Building One, Suite 300
Austin, Texas 78746

OR2017-15221

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# 665297 (Request# 17-063).

The Southern Methodist University Police Department (the "department"), which you represent, received a request for information pertaining to a specified incident. We understand the department has withheld some information and redacted some information pursuant to the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232g(a).¹ You state you have released some information to the requestor. You claim the remaining requested information is not subject to the Act. In the alternative, you claim the remaining requested information is confidential pursuant to FERPA. We have considered the submitted arguments and reviewed the submitted information.

¹The 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. The DOE has determined FERPA determinations must be made by the educational authority in possession of the educational records. We have posted a copy of the letter from the DOE on the Attorney General's website at <https://www.texasattorneygeneral.gov/files/og/20060725usdoe.pdf>.

Initially, we note some of the responsive information was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2017-02700 (2017). In that ruling, we determined the responsive video recording was not subject to disclosure pursuant to section 51.212(f) of the Education Code. There is no indication the law, facts, and circumstances on which the prior ruling was based have changed. Accordingly, we conclude the department must continue to rely on Open Records Letter No. 2017-02700 as a previous determination and withhold the identical information 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 information is or is not excepted from disclosure). We consider the department's arguments for information not previously ruled upon.

Section 51.212(f) of the Education Code 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 Act], only with respect to information relating solely to law enforcement activities.

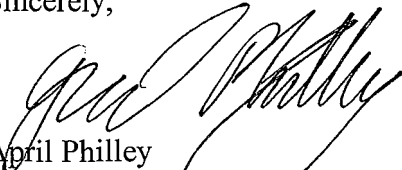
Educ. Code § 51.212(f). We understand the department is a campus police department of a private institution of higher education. *See id.* §§ 51.212(e), 61.003. Thus, the department is a governmental body for purposes of the Act, and information maintained by the department is subject to disclosure under the Act, to the extent such information relates solely to law enforcement activities. You state the submitted report is maintained by the department. However, you represent the report at issue was not created for a law enforcement purpose. Rather, you argue the information at issue consists of administrative information. You explain the report at issue was created for the Southern Methodist University ("SMU") Office of Institutional Access and Equity and not the department. You further explain the report was used in an investigation by the SMU Office of Institutional Access and Equity and not by the department. You state the information at issue is an administrative report for possible code of conduct violations and not a police report. Upon review, we agree the information at issue is administrative in nature and does not relate solely to law enforcement activities. *See id.* § 51.212(f). Accordingly, we find the remaining requested information is not subject to disclosure pursuant to section 51.212(f) of the Education Code, and need not be released to the requestor.²

²As our ruling is dispositive, we need not address the department's remaining argument against disclosure of the remaining requested information.

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,



April Philley
Assistant Attorney General
Open Records Division

AP/sb

Ref: ID# 665297

Enc. Submitted documents

c: Requestor
(w/o enclosures)