



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 17, 2019

Ms. Vanessa A. Gonzalez
Counsel for the Baylor University Police Department
Bickerstaff, Heath, Delgado & Acosta, L. L. P.
3711 South MoPac Expressway, Building One, Suite 300
Austin, Texas 78746

OR2019-10314

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# 760733 (ORR# 19-013, 19-016).

The Baylor University Police Department (the "department"), which you represent, received one request for all reports to the police of all rape-related incidents for a specified period of time, and a second request from a different requestor for police reports and communications related to assault or sexual assault for specified periods of time. The department states it is redacting some information pursuant to the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code.¹ The department claims the submitted information is either not subject to the Act or excepted from disclosure under

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 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 education records. We have posted a copy of the letter from the DOE to this office on the Attorney General's website: <https://www.texasattorneygeneral.gov/sites/default/files/files/divisions/open-government/20060725-USDOE-FERPA.pdf>.

section 552.108 of the Government Code. We have considered the submitted arguments and reviewed the submitted representative sample of information.²

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. The department represent some of submitted information, which consists of Campus Safety Authority (“CSA”) reports, Timely Warning Reports (“TWR”), and certain communications with administrators of Baylor University (the “university”), does not relate “solely to law enforcement activities.” The department explains the CSA reports are administrative records that it receives from a civilian department, and it keeps these reports separate from its criminal investigation files. The department informs us, after receiving a CSA report, it creates a TWR to document the decision on whether a campus-wide “Timely Warning” will be issued pursuant to the federal Clery Act. *See generally* 20 U.S.C. § 1092(f); 34 C.F.R. 668.46. The department asserts each submitted TWR is an administrative record created for the Clery Act purposes. The department also represents the submitted communications between members of the department and administrators of the university are related to administrative activities, and not solely to law enforcement activities. 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 information that the department has indicated is not subject to disclosure pursuant to section 51.212(f) of the Education Code. Thus, the department is not required to release this 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). A governmental body claiming section 552.108(a)(1) must explain how and why the release of the information at issue would interfere with law enforcement. *See id.* §§ 552.108(a)(1),

²We assume the “representative sample” of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706, 710 (Tex. 1977). The department states Exhibit E for the second request relates to a pending criminal investigation or prosecution. Based on this representation, we conclude the release of this 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, 186-87 (Tex. Civ. App.—Houston [14th Dist.] 1975) (delineating law enforcement interests present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, the department may withhold Exhibit E under section 552.108(a)(1) of the Government Code.

Section 552.108(a)(2) of the Government Code 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 conviction or deferred adjudication. *See id.* §§ 552.108(a)(2), .301(e)(1)(A). The department states Exhibits B1 and B2 for the second request pertains to cases that concluded in results other than conviction or deferred adjudication. Therefore, we agree section 552.108(a)(2) is applicable to this information.

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 Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). *See* 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, which the department must release to the second requestor, the department may withhold the Exhibits B1 and B2 for the second request under section 552.108(a)(2) of the Government Code.³

In summary, the information that the department has indicated is not subject to disclosure pursuant to section 51.212(f) of the Education Code. The department may withhold Exhibit E of the second request under section 552.108(a)(1) of the Government Code. With the exception of basic information, which the department must release to the second requestor, the department may withhold Exhibits B1 and B2 for the second request under section 552.108(a)(2) of the Government Code.

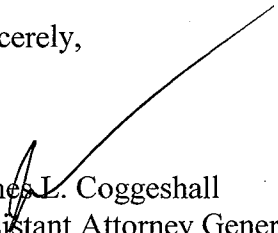
Finally, the department also asks this office to issue a previous determination concluding CSA and TWR reports are not subject to the Act under section 51.212 of the Education

³We note the information to be released is not responsive to the first request. We also note the basic information contains an arrestee's social security number. *See* ORD 127 at 4. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. Gov't Code § 552.147(b).

Code. Open Records Decision No. 673 (2001). We decline to issue such a previous determination at this time. Accordingly, 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/jxd

Ref: ID# 760733

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)