



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 3, 2019

Mr. S. Anthony Safi
Counsel for the El Paso Independent School District
Mounce, Green, Myers, Safi, Paxson & Galatzan, P.C.
P.O. Box 1977
El Paso, Texas 79999-1977

OR2019-18271

Dear Mr. Safi:

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# 773644 (ORR# W001843-040819, W001881-042419), W001883-042419.

The El Paso Independent School District (the "district"), which you represent, received requests from the same requestor for a specified incident report and related recordings (the "first requestor"), and a third request from a different requestor for the incident report at issue. The district 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 district claims the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the claimed exception 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 consent, 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>.

The submitted information includes a body worn camera recording of a district police officer, which was requested by the first requestor. Body worn cameras are subject to chapter 1701 of the Occupations Code. Chapter 1701 provides the procedures a requestor must follow when seeking a body worn camera recording. Section 1701.661(a) provides the following:

A member of the public is required to provide the following information when submitting a written request to a law enforcement agency for information recorded by a body worn camera:

- (1) the date and approximate time of the recording;
- (2) the specific location where the recording occurred; and
- (3) the name of one or more persons known to be a subject of the recording.

Occ. Code § 1701.661(a). The first requestor does not give the requisite information under section 1701.661(a). As this requestor did not properly request the body worn camera recording at issue pursuant to chapter 1701, our ruling does not reach this information and the district is not required to release it to that requestor. However, pursuant to section 1701.661(b), a “failure to provide all the information required by Subsection (a) to be part of a request for recorded information does not preclude the requestor from making a future request for the same recorded information.” *Id.* § 1701.661(b).

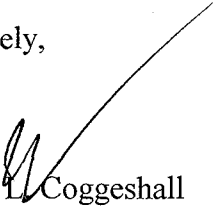
Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. Gov’t Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the information at issue 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 district states the submitted incident report pertains to a case that concluded in a result other than conviction or deferred adjudication. Therefore, we agree section 552.108(a)(2) is applicable to this information. We note, pursuant to the court’s decision in *City of Carrollton v. Paxton*, 490 S.W.3d 187 (Tex. App.—Austin 2016, pet. denied), and the submitted briefing, section 552.108(c) of the Government Code is not applicable in this instance. Therefore, the district may withhold the submitted incident report under section 552.108(a)(2) of the Government Code.

In summary, because the first requestor did not properly request the submitted body worn camera recording pursuant to chapter 1701 of the Occupations Code, our ruling does not reach the body worn camera recording at issue and the district is not required to release it to that requestor. The district may withhold the submitted incident report 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 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/mo

Ref: ID# 773644

Enc. Submitted documents

c: 2 Requestor
(w/o enclosures)