



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

February 11, 2020

Ms. Lindsey K. Rattikin  
Assistant University Counsel  
Southern Methodist University  
P.O. Box 750132  
Dallas, Texas 75275-0132

OR2020-04166

Dear Ms. Rattikin:

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# 811361.

The Southern Methodist University Police Department (the "department") received a request for all information related to a named individual pertaining to a specified time period. You state the department will redact certain motor vehicle record information under section 552.130(c) of the Government Code and social security numbers under section 552.147(b) of the Government Code.<sup>1</sup> You state the department redacted information pursuant to the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232g(a).<sup>2</sup> You claim some of the submitted information is not subject to the Act. You

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<sup>1</sup>Section 552.130(c) of the Government Code allows a governmental body to redact the information described in section 552.130(a) without the necessity of seeking a decision from the attorney general. *See Gov't Code* § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e). 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. *See id.* § 552.147(b).

<sup>2</sup> 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. 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 [www.texasattorneygeneral.gov](#). A copy of this letter may be found on the Office of the Attorney General's website at:

also claim some of the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the submitted arguments and reviewed the submitted information.

Initially, we address the department's claim a portion of the requested information is not subject to the Act. Section 51.212(f) of the Education Code reads as follows:

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 some of the requested records relate to communications and records generated outside the department. Further, you represent the information at issue was not created for a law enforcement purpose. 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 Exhibit B is not subject to disclosure pursuant to section 51.212(f) of the Education Code and need not be released to the requestor.

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. This office has found a compilation of an individual's criminal history is highly embarrassing information, the publication of which would be highly objectionable to a reasonable person. *Cf. United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (when considering prong regarding individual's privacy interest, court recognized distinction between public records found in courthouse files and local police stations and compiled summary of information and noted that individual has significant privacy interest in compilation of one's criminal history). Furthermore, we find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public.

The present request seeks all reports pertaining to a named individual. This request requires the department to compile the named individual's criminal history and implicates the

named individual's right to privacy. Therefore, to the extent the department maintains unspecified law enforcement records listing the named individual as a suspect, arrestee, or criminal defendant, the department must withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, Exhibit B is not subject to disclosure pursuant to section 51.212(f) of the Education Code and need not be released to the requestor. To the extent the department maintains unspecified law enforcement records listing the named individual as a suspect, arrestee, or criminal defendant, the department must withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy.

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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,



Sean McCormick  
Attorney  
Open Records Division

SMC/eb

Ref: ID# 811361

Enc. Submitted documents

c: Requestor  
(w/o enclosures)