



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 14, 2007

Ms. Laura Pfefferle
Assistant General Counsel
Texas Department of State Health Services
1100 West 49th Street
Austin, Texas 78756

OR2007-10434

Dear Ms. Pfefferle:

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# 286962.

The Texas Department of State Health Services (the "department") received a request for the phone log, complaint form, or any other information received by the department that initiated a visit to the Latexo Independent School District on May 3, 2007. You state that you have released some of the requested information to the requestor. You claim that some of the submitted information is excepted from disclosure under sections 552.101 and 552.135 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, we address the requestor's assertion that the department has failed to meet its procedural obligations under the Act by not timely submitting a request for a ruling to this office in regards to a May 7, 2007 request. Section 552.301 of the Government Code prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Section 552.301(b) provides that a governmental body must ask for the attorney general's decision and state the exceptions to disclosure that it claims not later than the tenth business day "after the date of receiving the written request" for information. *See* Gov't Code § 552.301(a), (b). The department informs us that it already released information in response to the May 7th request. Thus, the department considers the requestor's second request dated June 1, 2007 as a separate request for information. We agree. The second request for information was received by the department on June 4, 2007. The department then requested a ruling from this office, stating the exceptions to disclosure that apply to the requested information, on

June 14, 2007, within ten business days of receiving the written request for information. Therefore, we conclude that the department complied with the Act's procedural requirements in seeking an open records decision from this office.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses information protected by the common-law informer's privilege, which has long been recognized by Texas courts. *See Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969); *Hawthorne v. State*, 10 S.W.2d 724, 725 (Tex. Crim. App. 1928). This privilege protects from disclosure the identities of persons who report activities over which the governmental body has criminal or quasi-criminal law-enforcement authority, provided that the subject of the information does not already know the informer's identity. Open Records Decision Nos. 515 at 3 (1988), 208 at 1-2 (1978). It protects the identities of individuals who report violations of statutes to the police or similar law-enforcement agencies, as well as those who report violations of statutes with civil or criminal penalties to "administrative officials having a duty of inspection or of law enforcement within their particular spheres." Open Records Decision No. 279 at 2 (1981) (citing Wigmore, Evidence, § 2374, at 767 (McNaughton rev. ed. 1961)). The report must be of a violation of a criminal or civil statute. *See* Open Records Decision Nos. 582 at 2 (1990), 515 at 4-5 (1988).

You inform us that a portion of the submitted information contains the identity of an individual who reported alleged violations of section 341.065 of the Health and Safety Code to the department. You indicate that the alleged violations reported are within the purview of the department's enforcement authority. You also state that the identity of the complainant is not known by the requestor. You inform us that sections 341.091 and 341.092 of the Texas Health and Safety Code provide for criminal and civil penalties for violations of section 341.065. Based on your representations and our review of the submitted information, we find that you have demonstrated the applicability of the common-law informer's privilege in this instance. Therefore, the department must withhold the portions of the submitted information you have marked pursuant to section 552.101 of the Government Code and the common-law informer's privilege.¹ The remaining submitted information must be released.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the

¹As our ruling is dispositive, we need not address your remaining argument against disclosure.

governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Office of the Attorney General at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Allan D. Meesey
Assistant Attorney General
Open Records Division

ADM/eeg

Ref: ID# 286962

Enc. Submitted documents

c: Mr. Roy H. Tucker, Ed. D.
Latexo Independent School District
P.O. Box 975
Latexo, Texas 75849
(w/o enclosures)