



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 24, 2007

Mr. Manuel C. Maltos  
Kazen, Meurer & Perez, L.L.P.  
P.O. Box 6237  
Laredo, Texas 78042-6237

OR2007-11079

Dear Mr. Maltos:

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# 287648.

The Laredo Independent School District (the "district"), which you represent, received several requests for information and documentation regarding a specified allegation against the requestor. You state that some of the requested information has been provided 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.

Initially, we note that it appears the district has previously released to the requestor the information in Exhibit A, which you now seek to withhold under section 552.101 and the informer's privilege and section 552.135 of the Government Code. However, the Act does not permit the selective disclosure of information to the public. *See Gov't Code §§ 552.007(b), .021; Open Records Decision No. 463 at 1-2 (1987).* If a governmental body voluntarily releases information to a member of the public, such information may not later be withheld unless its disclosure is expressly prohibited by law. *See Gov't Code § 552.007.* Although you assert that Exhibit A is protected under the common-law informer's privilege, this exception is discretionary and may be waived. As such, this exception does not make information confidential for purposes of section 552.007. *See id.* (prohibiting selective disclosure of information that governmental body has voluntarily made available to any

member of the public); Open Records Decision No. 549 at 6 (1990) (governmental body may waive common-law informer's privilege); *see also* Open Records Decision No. 400 (1983) (governmental body may waive right to claim permissive exceptions to disclosure under the Act, but it may not disclose information made confidential by law). Accordingly, Exhibit A may not be withheld pursuant to the informer's privilege. However, because section 552.135 of the Government Code makes information confidential by law, we will address your arguments with regard to this exception for the information in Exhibit A as well as the remaining submitted information.

We first address your arguments under section 552.101 of the Government Code for Exhibits B and C. Section 552.101 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). The privilege 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). However, witnesses who provide information in the course of an investigation but do not make the initial report of the violation are not informants for the purposes of claiming the informer's privilege. Additionally, the informer's privilege does not apply where the informant's identity is known to the individual who is the subject of the complaint. *See* Open Records Decision No. 208 (1978).

You inform us that a portion of the submitted information contains the identities of individuals who reported alleged violations of sections 37.10 and 15.02 of the Texas Penal Code to the district. You state that violations of these sections of the Texas Penal Code carry criminal penalties. However, the submitted information consists of statements and information regarding an offender and witnesses who provided information in the course of an investigation, but who did not report the alleged illegal conduct. These individuals are not informants for the purpose of the informer's privilege. We therefore conclude that you have not demonstrated the applicability of the informer's privilege to the information in Exhibits B and C, and none of the information at issue may be withheld under section 552.101 of the Government Code on that basis.

You also claim that some of the submitted information is excepted under section 552.135 of the Government Code. Section 552.135 provides in relevant part:

(a) "Informer" means a student or former student or an employee or former employee of a school district who has furnished a report of another person's or persons' possible violation of criminal, civil, or regulatory law to the school district or the proper regulatory enforcement authority.

(b) An informer's name or information that would substantially reveal the identity of an informer is excepted from [required public disclosure].

Gov't Code § 552.135(a)-(b). Section 552.135 protects an informer's identity, but does not encompass protection for witness information or statements. Upon review, we find that you have failed to demonstrate that the submitted information identifies an informer for purposes of section 552.135. Thus, the district may not withhold any of the submitted information under section 552.135.

We note that some of the submitted information may be subject to section 552.117 of the Government Code.<sup>1</sup> Section 552.117(a)(1) excepts from disclosure the current and former home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024. Gov't Code § 552.117(a)(1). Whether information is protected by section 552.117(a)(1) must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Thus, the district may only withhold information under section 552.117(a)(1) on behalf of a current or former official or employee who made a request for confidentiality under section 552.024 prior to the date on which the request for information was made. Therefore, the district may only withhold the information we have marked under section 552.117(a)(1) if the employee at issue made a request for confidentiality under

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<sup>1</sup>The Office of the Attorney General will raise a mandatory exception like section 552.117 on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

section 552.024 prior to the date on which the request for this information was made.<sup>2</sup> The remaining submitted information must be released.<sup>3</sup>

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 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).

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<sup>2</sup>We note that the requestor has a right of access to her own section 552.117(a)(1) information pursuant to section 552.023 of the Government Code that would otherwise be excepted from release under the Act. *See* Gov't Code § 552.023(a) (person or person's authorized representative has special right of access to information relating to person and protected from public disclosure by laws intended to protect that person's privacy interests); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself). Should the district receive another request for this particular information from a different requestor, then the district should again seek a decision from this office.

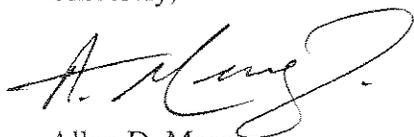
<sup>3</sup>We note that the submitted information contains social security numbers. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. The requestor has a right, however, to her own social security number. *See generally* Gov't Code § 552.023(b) (governmental body may not deny access to person to whom information relates, or that person's representative, solely on grounds that information is considered confidential by privacy principles).

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# 287648

Enc. Submitted documents

c: Ms. Alma Ochoa  
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Laredo, Texas 78041  
(w/o enclosures)