ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 31, 2008

Ms. Cara Leahy White
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OR2008-01479

Dear Ms. White:

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# 301379.

The City of Southlake (the "city"), which you represent, received a request for information pertaining to investigations into a specified Carroll Independent School District (the "district") bond program, a named former district employee, and a named current district employee. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.135 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that you have only submitted information pertaining to the former employee, and you have not submitted information responsive to the request for information involving the current employee nor the specified bond program. To the extent additional responsive information existed on the date that the city received the instant request, we assume that information has been released to the requestor. If the city has not released any such information, the city must release it to the requestor at this time. *See* Gov't Code §§ 552.301(a), .302; Open Records Decision No. 664 (2000) (noting that if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible under circumstances).

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," and encompasses information made confidential by other statutes. Gov't Code § 552.101. Section 552.101 encompasses section 58.007(c) of the Family Code, which provides in pertinent part as follows:

> (c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:
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> > (1) if maintained on paper or microfilm, kept separate from adult files and records;
> >
> > (2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and
> >
> > (3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapter B.

Fam. Code § 58.007(c). We note that section 58.007(c) is not applicable to information that relates to a juvenile as a complainant, victim, witness, or other involved party. *See id.* Upon review, we determine that Documents 1, 3, and 7 involve juvenile conduct that occurred after September 1, 1997, and it does not appear that any of the exceptions in section 58.007 apply. Thus, we agree that Documents 1, 3, and 7 are confidential pursuant to section 58.007(c) of the Family Code and must be withheld under section 552.101 of the Government Code.[1] Although you also raise section 58.007 for Document 4, we find that this information does not involve an identified juvenile suspect engaged in delinquent conduct or conduct indicating a need for supervision. Thus, you have failed to demonstrate the applicability of the section 58.007 to Document 4, and it may not be withheld on this basis.

Next, you argue the remaining information may be withheld under section 552.108 of the Government Code. Section 552.108 provides in part:

> (a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

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[1] As our ruling is dispositive, we need not consider your remaining claimed exceptions to disclosure of this information.

> (1) release of the information would interfere with the detection, investigation, or prosecution of crime; [or]
>
> (2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]

Gov't Code § 552.108(a)(1)-(2). We note that section 552.108(a)(1) and section 552.108(a)(2) typically encompass two mutually exclusive types of information. Section 552.108(a)(1) is applicable to information whose release would interfere with a pending criminal case. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n. r. e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). Section 552.108(a)(2) is applicable only if the information at issue relates to a concluded criminal investigation that did not result in a conviction or a deferred adjudication. A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information at issue. *See* Gov't Code § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

In this instance, you state that Document 5 relates to a pending criminal investigation, and that release of this information would interfere with the detection, investigation, or prosecution of a crime. Upon review, we conclude that section 552.108(a)(1) is applicable to Document 5. You further state that Documents 2 and 4 pertain to criminal cases that concluded in a final result other than conviction or deferred adjudication. Upon review, we conclude that section 552.108(a)(2) is applicable to Documents 2 and 4.

Next, you state that Document 6 involves an open investigation and thus may be withheld under section 552.108(a)(1) of the Government Code. However, you also state that Document 6 involves information relating to the detection, investigation, or prosecution of a crime that has resulted in an outcome other than conviction or deferred adjudication and thus may be withheld under section 552.108(a)(2). Because you have provided this office with contradictory information pertaining to Document 6, we find that you have failed to sufficiently demonstrate the applicability of section 552.108 to this information. *See* Gov't Code § 552.301(e)(1)(A) (governmental body must provide comments explaining why claimed exceptions to disclosure apply). We therefore conclude that the city may not withhold Document 6 under section 552.108.

As you acknowledge, basic information about an arrested person, an arrest, or a crime is not excepted from disclosure under section 552.108. Gov't Code § 552.108(c). Such basic information refers to the information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-88; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of basic

information, the city may withhold Documents 2, 4, and 5 pursuant to section 552.108(a) of the Government Code.

With respect to basic information, you argue that the identities of complainants in Documents 2 and 5 are excepted from disclosure under section 552.101 of the Government Code in conjunction with the common-law informer's privilege. Basic information that is not excepted under section 552.108 includes the identification and description of a complainant. *See Houston Chronicle*, 531 S.W.2d 177; Open Records Decision No. 127 (1976). Section 552.101 of the Government Code also encompasses 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). It 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 informer's 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).

In this instance, you argue the city may withhold the identifying information of individuals who have reported possible violations of various provisions of the Penal Code to the police department. Upon review, we conclude you may withhold the basic information in Document 5 we have marked under section 552.101 of the Government Code in conjunction with the informer's privilege. We note, however, that the purpose of the privilege is to encourage "citizens" to report wrongful behavior to the appropriate officials. *See Roviaro v. United States*, 353 U.S. 53, 59 (1957). The privilege is not intended to protect the identities of public officials who have a duty to report violations of the law. In this case, the complainant in Document 2 is a district employee. Because the public employee was acting within the scope of his employment when filing the complaint with the police department, the informer's privilege does not protect the public employee's identity. *Cf. United States v. St. Regis Paper Co.*, 328 F.Supp. 660, 665 (W.D. Wis. 1971) (concluding that public officer may not claim informer's reward for service it is his or her official duty to perform). Therefore, none of the basic information in Document 2 may be withheld on the basis of the common-law informer's privilege.

Next, the city argues section 552.135 of the Government Code for a portion of the remaining information. Section 552.135 provides:

> (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.
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> (b) An informer's name or information that would substantially reveal the identity of an informer is excepted from [required public disclosure].
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> (c) Subsection (b) does not apply:
>
> > (1) if the informer is a student or former student, and the student or former student, or the legal guardian, or spouse of the student or former student consents to disclosure of the student's or former student's name; or
> >
> > (2) if the informer is an employee or former employee who consents to disclosure of the employee's or former employee's name; or
> >
> > (3) if the informer planned, initiated, or participated in the possible violation.

Gov't Code § 552.135(a)-(c). Section 552.135 was enacted by the Seventy-sixth Legislature for the purpose of enforcing compliance by school districts with the Act. *See* Act of May 30, 1999, 76th Leg., R.S., ch. 1335, § 6, 1999 Tex. Sess. Law Serv. 4543, 4545 (codified at Gov't Code § 552.135). It is clear from the legislative history of the exception that section 552.135 applies only to information held by a school district or a proper regulatory enforcement authority. *See* House Comm. on Public Education, Bill Analysis, H.B. 211, 76th Leg. (1999) (noting that enacting legislation provides appellate remedy for school districts and open-enrollment charter schools that disagree with attorney general decisions with respect to public information, along with new exception to disclosure for identity of school district informer). Moreover, section 552.135(d), in providing for disclosure of information to a law enforcement agency, indicates that the exception applies to information that is not already in the hands of a law enforcement agency. *See* Gov't Code § 552.135(d); *see also* Open Records Decision Nos. 658 at 4 (1998) (statutory confidentiality provision must be express and cannot be implied), 478 at 2 (1987) (language of confidentiality statute controls scope of protection). The information at issue here is all held by the city on behalf of the Southlake DPS Police Department. We therefore determine that section 552.135 is not applicable to any of the information in the offense reports at issue. Accordingly, the city may not withhold any of the submitted information pursuant to section 552.135 of the Government Code.

In summary, the city must withhold Documents 1, 3, and 7 in their entirety pursuant to section 552.101 of the Government Code in conjunction with section 58.007 of the Family

Code. With the exception of basic information, the city may withhold Documents 2, 4, and 5 under section 552.108 of the Government Code. Finally, in regard to the basic information that must be released in Document 5, the city may withhold information we have marked pursuant to section 552.101 of the Government Code in conjunction with the informer's privilege. The remaining 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 governmental body wants to challenge this ruling, the governmental body must file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, 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 challenge 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,

C. Chantaplin-McLelland

Chanita Chantaplin-McLelland
Assistant Attorney General
Open Records Division

CC/mcf

Ref: ID# 301379

Enc. Submitted documents

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