



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 19, 2009

Mr. Fortunato Paredes
Escamilla & Poneck, Inc.
216 West Village Boulevard, Suite 202
Laredo, Texas 78041

OR2009-03600

Dear Mr. Paredes:

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# 337705.

The United Independent School District (the "district"), which you represent, received a request for information pertaining to a named former employee's termination, as well as his application for employment with the district. You state the district has released most of the submitted information. You claim that 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 received and considered comments from 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 contention that the district failed to comply with its procedural obligations under section 552.301(b) of the Government Code. Section 552.301 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) requires that a governmental body ask for a decision from this office and state which exceptions apply to the requested information by the tenth business day after receiving the request. *Id.* § 552.301(b). You inform us that the district received the request for information on December 18, 2008. You also state, and provide documentation showing, the district was closed for business from December 19, 2008 to January 5. Thus, the district's ten-business-day deadline was January 20, 2009. We note the district's request for a ruling bears a postmark date of January 12, 2009. *See id.* § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail, common

or contract carrier, or interagency mail). Upon review, we find that the district's request for a decision was timely. *See id.* § 552.301(b). Accordingly, we will address the district's arguments against disclosure of the submitted information.

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 exception encompasses information protected by the 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). The informer's 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 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); *see* 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 state that the informant at issue reported an alleged violation of civil or criminal law to the district. You inform this office that the district, through its police department, is charged with enforcing the law. Although you do not identify the law at issue or state whether a violation of that law carries civil or criminal penalties, we note that the submitted information, on its face, reveals the informant reported a possible violation of the Texas Penal Code, which carries criminal penalties. Accordingly, based on your representations and our review of the submitted information, we find the district may withhold the identifying information of the informer, which we have marked, under section 552.101 of the Government Code in conjunction with the informer's privilege.¹ However, you have failed to demonstrate that the remaining information identifies an informant; therefore, no portion of the remaining information may be withheld under section 552.101 in conjunction with the informer's privilege.

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.

¹We note that, although the district states in its brief that the submitted information is an "anonymous letter," the letter is, in fact, not anonymous.

(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). Because the Texas legislature limited the protection of section 552.135 to the identity of a person who reports a possible violation of "law," a school district that seeks to withhold information under section 552.135 must clearly identify to this office the specific civil, criminal, or regulatory law that is alleged to have been violated. *See id.* § 552.301(e)(1)(A). Furthermore, section 552.135 only protects information that identifies an "informer" as defined by subsection (a). *See id.* § 552.135(a). Upon review, we find that the remaining information does not contain the informers' identifying information. Accordingly, the district may not withhold any part of the remaining information pursuant to section 552.135. As you have raised no further exceptions to disclosure, the remaining information must be released.

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.oag.state.tx.us/open/index_orl.php, 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 must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/eb

Ref: ID# 337705

Enc. Submitted documents

c: Requestor
(w/o enclosures)