



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 14, 2010

Mr. John A. Kazen  
Kazen, Meurer & Perez, L.L.P.  
For Laredo Independent School District  
P.O. Box 6237  
Laredo, Texas 78042-6237

OR2010-05271

Dear Mr. Kazen:

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# 375883.

The Laredo Independent School District Police Department (the "department") received a request for the following information concerning case number 09-0913: the police report, notes, photographs, and names and addresses for any known eyewitnesses to the automobile/pedestrian accident. You state the department has released some of the requested information. You claim case report 09-0913 and the related witness statement are 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 must address the department's obligations under the Act. Section 552.301 of the Government Code describes the procedural obligations placed on a governmental body that receives a written request for information it wishes to withhold. Pursuant to section 552.301(e), the governmental body is required to submit to this office within fifteen business days of receiving the request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See* Gov't Code § 552.301(e). The department states it received the request for information on January 25, 2010. The department did not, however, submit the specific information requested or its arguments against disclosure for our review until February 17, 2010. Consequently, we find the department failed to comply with the requirements of section 552.301.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of the Act results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *Id.* § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 319 (1982). Although you raise section 552.108 of the Government Code for case report 09-0913 and the witness statement, this section is a discretionary exception that protects a governmental body's interests and may be waived. *See* Open Records Decision Nos. 663 at 5 (1999) (untimely request for decision resulted in waiver of discretionary exceptions), 177 (1977) (statutory predecessor to section 552.108 subject to waiver). As such, it does not constitute a compelling reason to withhold information. Therefore, the department may not withhold the submitted information under section 552.108. You also raise section 552.101 of the Government Code in conjunction with the informer's privilege for the submitted witness statement. Normally, a compelling interest is demonstrated when some other source of law makes the information at issue confidential or third-party interests are at stake. *See* Open Records Decision No. 150 at 2 (1977). Because the purpose of the informer's privilege is to protect the flow of information to a governmental body, rather than to protect the interests of a third person, the informer's privilege, unlike other claims under section 552.101, can be waived. *See* Open Records Decision No. 549 at 6 (1990). Therefore, the informer's privilege may not serve as a compelling reason for overcoming the presumption of openness under section 552.302. Consequently, the department may not withhold the witness statement under section 552.101 in conjunction with the informer's privilege. You also raise section 552.101 in conjunction with common-law privacy and section 552.135 of the Government Code. Because common-law privacy and section 552.135 can provide compelling reasons to overcome the presumption of openness, we will consider your remaining arguments under these provisions.

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 the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be established. *See id.* at 681-82. The types of information considered intimate or embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *See id.* at 683. Although you assert the witness statement is excepted from disclosure under common-law privacy, you have not explained, nor can we discern, how any information contained in the statement is intimate or embarrassing. Accordingly, we find the witness

statement is not confidential under common-law privacy and may not be withheld under section 552.101 on that basis.

Section 552.135 of the Government Code provides in part:

(a) "Informer" means a student or a former student or an employee or former employee of a school district who has furnished a report of another person's 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].

(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), (b), (c). You state the witness statement contains the identifying information of an informer who reported a possible violation of law to the department. *See* Educ. Code § 37.081 (authorizing the board of trustees of any school district to commission peace officers and to define officers' territorial jurisdiction and duties). Based on your representations and our review, we have marked the information in case report 09-0913 and the witness statement, which, in this instance, identifies a person who reported an alleged violation of criminal law to the department. You do not indicate any of the exceptions in section 552.135(c) are applicable in this instance. Therefore, the department must withhold the marked information under section 552.135. You have not explained, however, nor can we discern, how the remaining information identifies an informer. Thus, the department may not withhold any of the remaining information under section 552.135.

We note the remaining information contains a Texas license plate number.<sup>1</sup> Section 552.130 of the Government Code excepts from disclosure information that relates to a motor vehicle

---

<sup>1</sup>The Office of the Attorney General will raise a mandatory exception, such as section 552.130 of the Government Code, on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

operator's license, driver's license, motor vehicle title, or registration issued by a Texas agency. Gov't Code § 552.130(a)(1), (2). Therefore, the department must withhold the Texas license plate number we marked under section 552.130.<sup>2</sup>

In summary, the department must withhold the information we marked under section 552.135 of the Government Code. The department must withhold the Texas license plate number we marked under section 552.130. 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](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, toll free, at (888) 672-6787.

Sincerely,



Jessica Eales  
Assistant Attorney General  
Open Records Division

JCE/eeg

Ref: ID# 375883

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

---

<sup>2</sup>We note that this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies, which authorizes withholding of ten categories of information, including a Texas license plate number under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.