



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 28, 2010

Mr. W. Montgomery Meitler
Assistant Counsel
Texas Education Agency
1701 North Congress Avenue
Austin, Texas 78701-1494

ATTORNEY GENERAL OF TEXAS

OR2010-06055

Dear Mr. Meitler:

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# 377480 (TEA PIR# 12657).

The Texas Education Agency (the "agency") received a request for information pertaining to complaints received by the agency over a specified period of time involving specified charter schools.¹ You claim that some of the requested information is excepted from disclosure under section 552.101 the Government Code. We have considered the exception you claim and reviewed the submitted information.

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. The informer's privilege, incorporated into the Act by section 552.101, 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

¹We note that the agency asked for and received clarification regarding this request. *See* Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information).

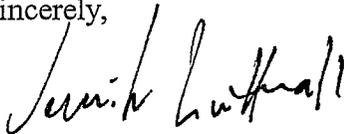
violations of statutes to the police or similar law-enforcement agencies, as well as those who report violations of statutes with civil or criminal penalties to "administrative officials having a duty of inspection or of law enforcement within their particular spheres." Open Records Decision No. 279 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, 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 state that the information at issue pertains to a complaint reported to the agency alleging violations of section 25.082(b) of the Texas Education Code. You explain that the agency is charged with enforcing this civil statute. You also state that violations of this statute are punishable by administrative and criminal penalties. *See* Educ. Code §§ 12.115, .116, .1161, .1162. Based on your representations and our review of the information at issue, we find that the submitted information involves reports of violations of law made to officials with the duty of enforcing that law. Accordingly, the agency may withhold the information we have marked pursuant to section 552.101 of the Government Code in conjunction with the common-law informer's privilege. However, we find that the remaining information you have marked does not identify the informer and, thus, may not be withheld under section 552.101 on the basis of the informer's privilege. 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, toll free, at (888) 672-6787.

Sincerely,



Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/dls

Ref: ID# 377480

Enc. Submitted documents

c: Requestor
(w/o enclosures)