



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 7, 2010

Ms. Meredith Hayes  
Abernathy, Roeder, Boyd & Joplin, P.C.  
Attorney for Mansfield Independent School District  
P.O. Box 1210  
McKinney, Texas 75070-1210

OR2010-08209

Dear Ms. Hayes:

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# 382093.

The Mansfield Independent School District (the "district"), which you represent, received a request for information pertaining to a specified incident. You claim the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.108, 552.117, 552.135, and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note you have redacted portions of the submitted information. You do not assert, nor does our review of our records indicate, that you have been authorized to withhold any such information without seeking a ruling from this office. *See* Gov't Code § 552.301(a); Open Records Decision 673 (2000). Because we can discern the nature of the information that has been redacted, being deprived of this information does not inhibit our ability to make a ruling, in this instance. Nevertheless, be advised that a failure to provide this office with requested information generally deprives us of the ability to determine whether information may be withheld and leaves this office with no alternative other than ordering that the redacted information be released. *See* Gov't Code §§ 552.301(e)(1)(D) (governmental body must provide this office with copy of "specific information requested" or representative sample), .302.

Next, we note the submitted information contains court-filed documents. These documents are subject to section 552.022(a)(17) of the Government Code, which provides that "information that is also contained in a public court record" is "public information and not excepted from required disclosure under this chapter unless [it is] expressly confidential under other law[.]" *Id.* § 552.022(a)(17). Although you assert this information is excepted from disclosure under section 552.108 of the Government Code, this section is a discretionary exception within the Act and not "other law" that makes information confidential. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 586 (1991) (governmental body may waive section 552.108). Therefore, the district may not withhold the court-filed documents under section 552.108. You also claim sections 552.102, 552.117, 552.135, and 552.137 of the Government Code, which are "other law" for the purposes of section 552.022. The common-law informer's privilege, which you claim under section 552.101 of the Government Code, is also other law that makes information confidential for the purposes of section 552.022.<sup>1</sup> *See In re City of Georgetown*, 53 S.W.3d 328 (Tex. 2001); *Tex. Comm'n on Envtl. Quality v. Abbott*, No. GN-204227 (126th Dist. Ct., Travis County, Tex.). However, upon review, the information at issue does not contain any information covered by these exceptions or the identity of an informer. Therefore, none of the information subject to section 552.022(a)(17) may be withheld under these bases.

We note one of the court-filed documents contains information that is subject to section 552.130 of the Government Code.<sup>2</sup> Section 552.130 excepts from disclosure "information [that] relates to ... a motor vehicle operator's or driver's license or permit issued by an agency of this state[.]" Gov't Code § 552.130(a)(1). We have marked a partial Texas driver's license number that is subject to section 552.130 of the Government Code. However, the requestor is the spouse of the individual whose Texas driver's license number is at issue. Section 552.130 protects personal privacy, and as her spouse's authorized representative, the requestor would have a right of access under section 552.023 to the marked Texas driver's license number. Thus, if the requestor is acting as the authorized representative of her spouse, then she has a right of access to his Texas driver's license number under section 552.023 of the Government Code and the district may not withhold that information from her under section 552.130. *See id.* § 552.023(a) (person or person's authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to that person and is protected from public disclosure by laws intended to protect person's privacy interests); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests

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<sup>1</sup>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.

<sup>2</sup>The Office of the Attorney General will raise a mandatory exception like section 552.130 of the Government Code on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

information concerning himself). To the extent the requestor is not acting as her spouse's authorized representative, the district must withhold the information we have marked under section 552.130 of the Government Code.<sup>3</sup>

We now turn to your arguments for the information not subject to section 552.022. Section 552.108(a)(1) of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). A governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the information at issue pertains to a pending criminal investigation being conducted by the district’s police department. Based on this representation and our review, we conclude the release of this information would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (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).

As you acknowledge, section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” Gov’t Code § 552.108(c). Section 552.108(c) refers to the basic information held to be public in *Houston Chronicle*, and includes the identity of the complainant and a detailed description of the offense. *See* 531 S.W.2d at 186-88. You assert the basic information should be withheld in its entirety to protect the identities of the victim and witness. We note, however, basic information does not include witness-identifying information or victim-identifying information, unless the victim is also the complainant. In this instance, because it does not appear that the victim is the complainant, the victim’s information is not part of basic information. However, you further contend the complainant’s identifying information should be withheld from disclosure under sections 552.101 and 552.135.

Section 552.101 encompasses the common-law informer’s privilege, which Texas courts have long recognized. *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 common-law 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). In this instance, you do not

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<sup>3</sup>We note this office recently issued Open Records Decision No. 684 (2009), a previous determination authorizing all governmental bodies to withhold ten categories of information, including a Texas driver’s license number under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

identify any individual in the information at issue who actually reported a violation of law. Further, you do not inform us that the alleged conduct is a violation of a criminal or civil statute. We conclude that the district has failed to demonstrate the applicability of the common-law informer's privilege in this instance. Thus, the district may not withhold any of the basic information pursuant to section 552.101 of the Government Code in conjunction with the informer's privilege.

Section 552.135 of the Government Code provides the following:

(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 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. Because the 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 the exception 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). Additionally, individuals who provide information in the course of an investigation, but do not make the initial report are not informants for purposes of section 552.135 of the Government Code. Upon review, we find that the district has failed to demonstrate how the remaining basic information reveals the identity of an informer for the purposes of section 552.135. Thus, the district may not withhold any portion of the basic information under section 552.135 of the Government Code

In summary, the district must release the information we have marked subject to section 552.022(a)(17) of the Government Code. In releasing this information, the district must withhold the information we have marked pursuant to section 552.130 of the Government Code to the extent the requestor does not have a right of access to the information under section 552.023 of the Government Code. With the exception of basic information, the district may withhold the remaining information under section 552.108(a)(1) of the Government Code.<sup>4</sup>

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.

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<sup>4</sup>As our ruling is dispositive, we need not address your remaining arguments against disclosure.

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,



Paige Lay  
Assistant Attorney General  
Open Records Division

PL/eeg

Ref: ID# 382093

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)