



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 20, 2011

Ms. Mari M. McGowan  
Abernathy Roeder Boyd & Joplin, PC  
P.O. Box 1210  
McKinney, Texas 75070

OR2011-07134

Dear Ms. McGowan:

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# 418166.

The North Central Texas College (the "college"), which you represent, received a request for the following information held by the college's outside counsel: statements from individuals pertaining to charges against the requestor's client and evidence provided by the college for use in a specified hearing. The submitted information reflects the college has redacted some information pursuant to the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232g.<sup>1</sup> You claim portions of the submitted information are excepted from disclosure under section 552.101 of the Government Code. You also state you notified third parties whose interests may be implicated by the request. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released). We have considered the exception you claim and reviewed the submitted information.

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<sup>1</sup>The United States Department of Education Family Policy Compliance Office (the "DOE") has informed this office that FERPA does not permit state and local educational authorities to disclose to this office, without parental consent, unredacted, personally identifiable information contained in education records for the purpose of our review in the open records ruling process under the Act. The DOE has determined that FERPA determinations must be made by the educational authority in possession of the education records. We have posted a copy of the letter from the DOE to this office on the Attorney General's website: <http://www.oag.state.tx.us/open/20060725usdoe.pdf>.

Section 552.101 of the Government Code excepts “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” *Id.* § 552.101. This exception encompasses information protected by 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). 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. Open Records Decision No. 515 at 3 (1988). 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 8 John H. Wigmore, *Evidence in Trials at Common Law*, § 2374, at 767 (J. 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, individuals who provide information in the course of an investigation but do not make the initial report of the violation are not informants for the purposes of claiming the informer’s privilege. The privilege excepts the informer’s statement only to the extent necessary to protect that informer’s identity. Open Records Decision No. 549 at 5 (1990).

The submitted information pertains the college’s dismissal of the requestor’s client for suspected theft and violations of college policy. You state the information identifies witnesses in the investigation of the allegations, whose identities you claim should be protected by to the informer’s privilege. However, as noted above, the informer’s privilege does not protect individuals who merely provide information in the course of an investigation, and you do not identify any individual who initially reported the violation of law at issue. We therefore conclude the college has failed to demonstrate the applicability of the common-law informer’s privilege to the submitted information. Thus, the college may not withhold any of the information at issue under section 552.101 of the Government Code in conjunction with the informer’s privilege.

We note the submitted information contains private e-mail addresses that are subject to section 552.137 of the Government Code.<sup>2</sup> Section 552.137 provides that “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under [the Act],” unless the owner of the e-mail address has affirmatively consented to its public disclosure or the e-mail address falls within the scope of section 552.137(c). Gov’t Code § 552.137(a)-(c). The e-mail addresses at issue are not specifically excluded by section 552.137(c). Thus, the e-mail addresses we marked must be withheld under

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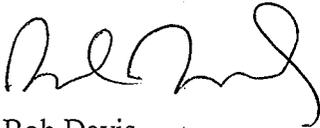
<sup>2</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

section 552.137 of the Government Code, unless the individuals to whom they pertain consent to their release.<sup>3</sup> The remaining submitted 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,



Bob Davis  
Assistant Attorney General  
Open Records Division

RSD/EEG

Ref: ID# 418166

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>3</sup>We note Open Records Decision No. 684 (2009) is a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including private e-mail addresses under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.