ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 13, 2011

Ms. Mari M. McGowan
For Collinsville Independent School District
Abernathy, Roeder, Boyd & Joplin, P.C.
P.O. Box 1210
McKinney, Texas 75070-1210

OR2011-08336

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# 420357.

The Collinsville Independent School District (the "district"), which you represent, received a request for information related to the requestor's client's alleged breaches of confidentiality, and violations of any policy, protocol, or contract. You state you have redacted student-identifying information from the information submitted to this office pursuant to the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232(g).[1] You claim the submitted information is excepted from disclosure under sections 552.101 and 552.135 of the Government Code. You also state release of the submitted information may implicate the privacy interests of certain individuals. You state, and provide information showing, you notified these individuals of this request and of their right to submit arguments to this office as to why the submitted information should not be

[1]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.

released.[2] *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. 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). The 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." *See* Open Records Decision No. 279 at 2 (1981) (citing 8 John H. Wigmore, Evidence in Trials at Common Law, § 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.

The district claims the informer's privilege for information relating to alleged violations of the educators' code of ethics, section 247.2 of title 19 of the Texas Administrative. We note witnesses who provide information in the course of an investigation but do not make the initial report of a violation are not informants for the purposes of the common-law informer's privilege. Further, we note you contend the allegations made involve a violation of the educators' code of ethics. We note the educators' code of ethics is enforced by the Texas State Board for Educator Certification (the "SBEC"). *See* 19 T.A.C. § 247.1. The district does not inform us any violation of the educators' code of ethics was reported to the SBEC or that the district is authorized to enforce the code of ethics. We, therefore, conclude the district may not withhold any of the information at issue under section 552.101 on the basis of the common-law 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 or persons' possible violation of criminal, civil, or regulatory law to the school district or the proper regulatory enforcement authority.

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[2]As of the date of this letter, we have not received any comments from any third parties explaining why any portion of the submitted information should not be released to the requestor.

> (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.

In this instance, you claim the submitted information reveals the identities of "witnesses/informers" who reported or witnessed possible violations of section 247.2 of title19 of the Texas Administrative Code. *See* Educ. Code § 21.041(b) (TEA shall propose rules providing for disciplinary proceedings); 19 T.A.C. § 247.2 (Code of Ethics and Standard Practices for Texas Educators). However, you have not identified as reporting parties the individuals whose identities you seek to withhold under section 552.135. Further, we note section 552.135 protects an informer's identity, but it does not generally encompass protection for witness statements. Upon review, we find the district has failed to demonstrate how any of the submitted information reveals the identities of individuals who reported another person's possible violation of criminal, civil, or regulatory law and, thus, has not demonstrated the submitted information reveals the identity of an informer for the purposes of section 552.135. Therefore, the district may not withhold any portion of the submitted information under section 552.135 of the Government Code.

We note some of the submitted information may be subject to section 552.117(a)(1) of the Government Code, which excepts from disclosure the home addresses and telephone numbers, social security number, and family member information of a current or former employee of a governmental body who requests this information be kept confidential under section 552.024.[3] *See* Gov't Code § 552.117(a)(1). Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body's receipt of the request for the information. *See* Open Records Decision No. 530 at 5 (1989). Thus, information may only be withheld under section 552.117(a)(1) on behalf of a current or former employee who made a request for confidentiality under section 552.024 prior to the date of the governmental body's receipt of the request for the information. We have marked a district employee's personal information. You have not informed us whether that employee elected to withhold her personal information prior to the district's receipt of the request. Therefore, if the employee timely elected to withhold her personal information, the district must withhold the information we have marked pursuant to section 552.117(a)(1) of the Government Code. If the employee did not timely elect to withhold this information,

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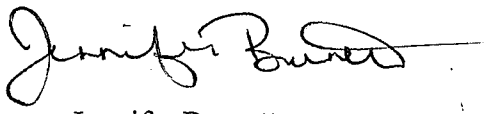
[3]The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions.

then the district may not withhold the marked information under section 552.117(a)(1) of the Government Code. As you raise no further exceptions, 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 Burnett
Assistant Attorney General
Open Records Division

JB/dls

Ref: ID# 420357

Enc. Submitted documents

c: Requestor
(w/o enclosures)