



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 25, 2012

Ms. Debra L. Goetz  
For McAllen Independent School District  
Atlas & Hall, L.L.P.  
P.O. Box 3725  
McAllen, Texas 78502-3725

OR2012-05856

Dear Ms. Goetz:

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# 451582.

The McAllen Independent School District (the "district"), which you represent, received a request for all documentation the district has forwarded to the State Board for Educator Certification or any division of the Texas Education Agency related to investigations by those agencies of allegations against the requestor's client. You state the district is withholding certain student-identifying information from the requested documents pursuant to the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code.<sup>1</sup> You claim the submitted information is excepted from disclosure pursuant to sections 552.101, 552.108, 552.117, and 552.135 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.108(a)(2) of the Government Code excepts "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred

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<sup>1</sup>The United States Department of Education Family Policy Compliance Office (the "DOE") has informed this office FERPA does not permit state and local educational authorities to disclose to this office, without parental or student 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 FERPA determinations must be made by the educational authority in possession of the education records. A copy of this letter may be found on the Office of the Attorney General's website: <http://www.oag.state.tx.us/open/20060725usdoe.pdf>.

adjudication[.]” Gov’t Code § 552.108(a)(2). Section 552.108(a)(2) is applicable only if the information at issue relates to a concluded criminal case that did not result in a conviction or a deferred adjudication. A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state the submitted information pertains to a closed case that concluded in a final result other than conviction or deferred adjudication. Based on your representation and our review, we find section 552.108(a)(2) is applicable to the submitted incident report, which we have marked.

We note the remaining information you seek to withhold under section 552.108(a)(2) consists of personnel records and administrative documents. In this instance, the requestor also seeks administrative information related to her client’s employment. By its terms, section 552.108 only applies to a law enforcement agency or prosecutor. Because the remaining information consists of personnel documents maintained by the district for employment purposes, we find you have failed to demonstrate the applicability of section 552.108(a)(2) to the information at issue. Accordingly, the district may not withhold the remaining information on that basis.

We note section 552.108 of the Government Code does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 552.108(c). Basic information refers to the information held to be public in *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). *See* 531 S.W.2d at 186-88; Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of basic information, the district may withhold incident report we have marked under section 552.108(a)(2) of the Government Code.

You next assert the remaining information is excepted from disclosure pursuant to section 552.101 of the Government Code in conjunction with the common-law informer’s privilege and section 552.135 of the Government Code. 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. This section 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).

Section 552.135 of the Government Code provides the following:

(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].

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 remaining information reveals the identities of informers. Upon review, we find you have failed to demonstrate any of the remaining information identifies informers for purposes of section 552.135 or the common-law informer’s privilege. Thus, the district may not withhold any of the remaining information under section 552.101 of the Government Code in conjunction with the common-law informer’s privilege or section 552.135 of the Government Code.

You generally assert some of the remaining information may be excepted from disclosure pursuant to common-law privacy, which is also encompassed by section 552.101 of the Government Code. Common-law privacy protects information that (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The type 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. *Id.* at 683. We note the scope of a public employee’s privacy is narrow. *See* Open Records Decision No. 423 at 2 (1984). Upon review, we find no portion of the remaining information is highly intimate or embarrassing and not of legitimate public concern. Therefore, the district may not withhold any of the remaining information pursuant to section 552.101 of the Government Code in conjunction with common-law privacy.

You state the district intends to redact portions of the remaining information under section 552.117 of the Government Code as permitted by section 552.024(c) of the Government Code.<sup>2</sup> Section 552.117(a)(1) excepts from disclosure the home addresses and

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<sup>2</sup>Section 552.024 of the Government Code authorizes a governmental body to withhold information subject to section 552.117 without requesting a decision from this office if the employee or official or former employee or official chooses not to allow public access to the information. *See* Gov’t Code §§ 552.117, .024(c).

telephone numbers, emergency contact information, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024 of the Government Code. Gov't Code § 552.117(a). However, we note the personal information at issue belongs to the requestor's client. Section 552.117 is based on privacy principles; as such, the requestor has a right of access to her client's private information as his authorized representative. *See id.* § 552.023 (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 person and is protected from public disclosure by laws intended to protect person's privacy interests). Thus, the district may not withhold this information from this requestor.

In summary, with the exception of basic information, the district may withhold the marked incident report under section 552.108(a)(2) of the Government Code. The district must release the remaining information.<sup>3</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.

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,



Jennifer Burnett  
Assistant Attorney General  
Open Records Division

JB/dls

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<sup>3</sup>As noted, the requestor in this instance has a special right of access under section 552.023 to some of the information being released. Accordingly, if the district should receive another request for this information from a different requestor, the district must again request an opinion from this office.

Ref: ID# 451582

Enc. Submitted documents

c: Requestor  
(w/o enclosures)