



June 24, 1999

Mr. David Anderson
Chief Counsel
Texas Education Agency
1701 North Congress Avenue
Austin, Texas 78701-1494

OR99-1762

Dear Mr. Anderson

You have asked 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# 125213.

The Texas Education Agency (the "TEA") received a request for a variety of information concerning driver education providers and certificates purchased, open records requests by TEA for a specified period, "all Driving Safety and Driver's Education instructor's," and "complaint log" information for a specified period. Specifically, you contend that the category of information at issue is the request for "complaint log (include any complaints against the Driver Training Division of the T.E.A.) from June 1998 through March 11, 1999."¹ In response to the request, you submit to this office for review the information at issue. You object to providing certain information about complaints under the informer's privilege aspect of section 552.101 and also under section 552.103 of the Government Code. We have considered the exceptions and arguments you have raised and reviewed the submitted information.

As for the "closed cases" you seek "to redact any complainant identifying information" in Exhibit 2 pursuant to the informer's privilege as protected under section 552.101 of the Government Code. For information to come under the protection of the informer's privilege, the information must relate to a violation of a civil or criminal statute. *See* Open Records Decision Nos. 515 at 2-5 (1988), 391 (1983). In *Roviaro v. United States*, 353 U.S. 53, 59 (1957), the United States Supreme Court explained the rationale that underlies the informer's privilege:

What is usually referred to as the informer's privilege is in reality the Government's privilege to withhold from disclosure the identity of persons

¹As you do not assert exceptions to disclosure of the other information sought, we assume the information that is not at issue has already been provided the requestor.

who furnish information of violations of law to officers charged with enforcement of that law. [Citations omitted.] The purpose of the privilege is the furtherance and protection of the public interest in effective law enforcement. The privilege recognizes the obligation of citizens to communicate their knowledge of the commission of crimes to law enforcement officials and, by preserving their anonymity, encourages them to perform that obligation.

Although the “informer’s privilege” aspect of section 552.101 ordinarily applies to the efforts of law enforcement agencies, it can apply to administrative officials with a duty of enforcing particular laws. Attorney General Opinion MW-575 (1982); Open Records Decision Nos. 285 at 1 (1981), 279 at 1-2 (1981); *see also* Open Records Decision No. 208 at 1-2 (1978). This may include enforcement of quasi-criminal civil laws. *See* Open Records Decision Nos. 515 at 3 (1988), 391 at 3 (1983).

TEA is a licensing agency responsible for regulating the commercial driver training industry. You state that the complaints in Exhibit 2 allege violations of article 4413(29c) of Vernon’s Texas Civil. Section 27 of article 4413(29c) provides that a violation of article 4413(29c) can result in both civil and criminal penalties. As it appears that the complaints assert actions that could result in both civil and criminal penalties, we agree that the identifying information about the complainants in Exhibit 2 may be withheld from disclosure under the informer’s privilege. Therefore, we agree that the a portion of the marked information in Exhibit 2 that tends to identify an informer may be withheld under the informer’s privilege as incorporated by section 552.101 of the Government Code. We note that the privilege excepts the informer’s statement itself only to the extent necessary to protect the informer’s identity. Open Records Decision No. 549 (1990); *See also Roviario*, 353 U.S. at 59 (privilege recognizes obligation of *citizens* to communicate knowledge of commission of crimes to law enforcement officials and by preserving their *anonymity*). Accordingly, most of the submitted marked information may be withheld, however, some of the listed complainants are identified as “anonymous”, “DPS”, and “Trooper.” Since such references do not identify a specific individual the informer’s privilege is not applicable to those references. We further note that, in reaching this conclusion, we assume that the possible violators do not know the identity of the informers.

As for the “cases currently under investigation” you seek “to withhold entire row of information” about the complaints contained in the complaint log, submitted as Exhibit 2, under section 552.103 of the Government Code. To show that section 552.103(a) is applicable, a governmental entity must show that (1) litigation is pending or reasonably anticipated and (2) the information at issue is related to the litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref’d n.r.e.); Open Records Decision No. 551 at 4 (1990). You indicate that the highlighted information in

Exhibit 2 concerns investigations in which TEA anticipates there will be contested case proceedings. We assume that, in referring to investigations and possible contested case proceedings, you are referring to sections 16 through 23 of article 4413(29c). Section 16 provides that the TEA may deny, suspend or revoke a license. Section 17 provides that a person aggrieved by the denial, suspension, or revocation may appeal that decision and request an administrative decision. Section 18 provides that the administrative decision may be appealed to district court in Travis County for review on a good cause showing. Sections 19 through 21 concern class action suits, section 22 discusses surrender of a license, and section 23 outlines the TEA's injunction authority. Based upon TEA's assertion that litigation is "the next formal step" in these particular investigations, we agree that section 552.103(a) is applicable to the "open cases" referenced in the submitted complaint log. Thus, the highlighted rows on the complaint log, Exhibit 2, may be withheld in their entirety. You must release the rest of the requested information which is held by the agency.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely

A handwritten signature in black ink that reads "Sam Haddad". The signature is written in a cursive style with a large, looping initial "S".

Sam Haddad
Assistant Attorney General
Open Records Division

SH/nc

Ref.: ID# 125213

Encl.: Submitted documents

cc: Mr. Bill Blasingame
Affiliated Driving Schools
P.O. Box 6473
Longview, Texas 75608-6473
(w/o enclosures)