



April 23, 2002

Ms. Lisa B. Silvia  
Paralegal  
Office of Legal Services  
Fort Worth Independent School District  
100 North University Drive, Suite NW 130  
Fort Worth, Texas 76107

OR2002-2066

Dear Ms. Silvia:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 160999.

The Fort Worth Independent School District (the "district") received a request for "a copy of my current case file as soon as possible, including all documentation such as statements, notes, etc." You claim that the requested information is excepted from disclosure under sections 552.101 and 552.135 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that the district submitted three pages of faxed correspondence from W. J. Turner Elementary School. Two pages of the information are written in Spanish. We have translated the documents during our review process. However, these pages don't appear to be responsive to the instant request. Accordingly, we do not address the applicability of your claimed exceptions to these documents.

Section 552.101 of the Government Code excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." You do not explain your reason for asserting this exception or otherwise specify the law you contend makes the information confidential. We will assume you raise section 552.101 in order to protect the identity of an informer.

The informer's privilege, incorporated into the Public Information Act by section 552.101, has long been recognized by Texas courts. *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). It 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 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 Wigmore, Evidence, § 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 (1988). 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).

You state that the submitted information pertains to a possible violation of section 247.2 of title 19 of the Texas Administrative Code. However, you do not indicate that a violation of this regulation would result in a civil or criminal penalty. Because the district has not met its burden under the informer's privilege, we conclude that the district may not withhold the complainant's identity under section 552.101 in conjunction with the informer's privilege.

We next address your arguments under section 552.135 of the Government Code. Section 552.135 (formerly section 552.131)<sup>1</sup> provides as follows:

(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.

(b) An informer's name or information that would substantially reveal the identity of an informer is excepted from the requirements of Section 552.021.

(c) Subsection (b) does not apply:

(1) if the informer is a student or former student, and the student or former student, or the legal guardian, or spouse of the student or former student consents to disclosure of the student's or former student's name; or

---

<sup>1</sup> Section 552.131 of the Government Code, as added by chapter 1335, Act of the 76th Legislature, relating to certain information held by school districts, has been renumbered as section 552.135 of the Government Code. See Act of May 22, 2001, 77th Leg., R.S., 2001 Tex. Sess. Law Serv. 3970, 4309 (Vernon).

(2) if the informer is an employee or former employee who consents to disclosure of the employee's or former employee's name; or

(3) if the informer planned, initiated, or participated in the possible violation.

(d) Information excepted under Subsection (b) may be made available to a law enforcement agency or prosecutor for official purposes of the agency or prosecutor upon proper request made in compliance with applicable law and procedure.

(e) This section does not infringe on or impair the confidentiality of information considered to be confidential by law, whether it be constitutional, statutory, or by judicial decision, including information excepted from the requirements of Section 552.021.

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 that exception must clearly identify to this office the specific civil, criminal, or regulatory law that is alleged to have been violated. *See* Gov't Code § 552.301(e)(1)(A).

You state that the information that the district bracketed for our review concerns a report of the teacher's alleged violation of chapter 247 of the Texas Administrative Code. Pursuant to section 552.303 of the Government Code, our office requested that the district "specify in great detail how a violation of these provisions constitutes a possible violation of 'criminal, civil, or regulatory law' under section 552.135" and provide a "specific explanation of which particular provision(s) of chapter 247 of title 19 of the Texas Administrative Code apply to the complained-of activity and how this provision(s) relate(s) to a possible violation of 'criminal, civil or regulatory law' under section 552.135." You state that because the State Board of Education was granted statutory authority pursuant to section 21.041(b)(8) of the Education Code to promulgate a Code of Ethics in chapter 247 of title 19 of the Texas Administrative Code, a violation of these administrative provisions, therefore, constitutes a violation of "regulatory law." Although you claim that Standards 5 and 6 of Principle III of chapter 247 of title 19 of the Texas Administrative Code may have been violated by the educator in this instance, you failed to sufficiently demonstrate how each of those provisions applies to the complained-of activity and how a violation of each particular provision constitutes a violation of criminal, civil, or regulatory law under section 552.135. *See* Gov't Code § 552.301(e)(1)(A). Therefore, after consideration of your arguments, we find that the district has not demonstrated that the conduct reported to the district concerns a possible violation of criminal, civil, or regulatory law under section 552.135. Accordingly, we conclude that the district may not withhold any portion of the information from disclosure pursuant to section 552.135 of the Government Code.

Next, we note that some of the information in the submitted documents may be excepted from required disclosure under section 552.117 of the Government Code. Section 552.117 excepts from required public disclosure the home addresses, telephone numbers, social security numbers, or family member information of public employees who request that this information be kept confidential under section 552.024. Therefore, section 552.117 requires you to withhold this information of a current or former employee or official who requested that this information be kept confidential under section 552.024. *See* Open Records Decision Nos. 622 (1994), 455 (1987). You may not, however, withhold the information of a current or former employee who made the request for confidentiality under section 552.024 after this request for information was made. Whether a particular piece of information is public must be determined at the time the request for it is made. Open Records Decision No. 530 at 5 (1989). Therefore, if the employees at issue here have elected not to allow public access to this information in accordance with the procedures of section 552.024 of the Government Code and prior to the district's receipt of the present request, the district must withhold this information from required public disclosure pursuant to section 552.117. We have marked the information that must be withheld under section 552.117 if the employee timely made the election not to allow public access to the information.

However, under section 552.023 of the Government Code, a person or a person's authorized representative has a special right of access to records that contain information relating to the person that are protected from public disclosure by laws intended to protect that person's privacy interests. Therefore, the requestor has a special right of access to her home address, home telephone number and social security number and the district may not withhold this information in this instance.

Finally, we note that the submitted documents contain information within the purview of sections 552.026 and 552.114 of the Government Code and the federal Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232g. FERPA provides that no federal funds will be made available under any applicable program to an educational agency or institution that releases personally identifiable information (other than directory information) contained in a student's education records to anyone but certain enumerated federal, state, and local officials and institutions, unless otherwise authorized by the student's parent. *See* 20 U.S.C. § 1232g(b)(1). "Education records" means those records that contain information directly related to a student and are maintained by an educational agency or institution or by a person acting for such agency or institution. *Id.* § 1232g(a)(4)(A). This office generally applies the same analysis under section 552.114 and FERPA. Open Records Decision No. 539 (1990). Section 552.114 excepts from disclosure student records at an educational institution funded completely or in part by state revenue. Section 552.026 provides as follows:

This chapter does not require the release of information contained in education records of an educational agency or institution, except in conformity with the Family Educational Rights and Privacy Act of 1974, Sec. 513, Pub. L. No. 93-380, 20 U.S.C. Sec. 1232g.

Therefore, any information that identifies a student must be withheld pursuant to FERPA and section 552.114 of the Government Code. We have marked the documents accordingly.

In summary, the district may not withhold any of the requested information under section 552.101 of the Government Code in conjunction with the informer's privilege. The district may not withhold any of the requested information under section 552.135 of the Government Code. If the employees have elected not to allow public access to their information in accordance with the procedures of section 552.024 of the Government Code prior to the district's receipt of the present request, the district must withhold the employees' home addresses, home telephone numbers, and social security numbers. However, the requestor has a special right of access to her own home address, home telephone number and social security number. The district must withhold any information that identifies a student pursuant to FERPA and section 552.114 of the Government Code. The remainder of the responsive information must be released to the requestor.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

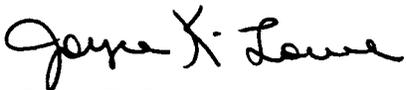
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Joyce K. Lowe  
Assistant Attorney General  
Open Records Division

JKL/sdk

Ref: ID# 160999

Enc: Submitted documents

c: Ms. Sharlene Harrison-Hinds  
2701 6<sup>th</sup> Avenue  
Fort Worth, Texas 76110  
(w/o enclosures)