



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 21, 2006

Mr. Ronny H. Wall  
Associate General Counsel  
Texas Tech University System  
P.O. Box 42021  
Lubbock, Texas 79409-2021

OR2006-11007

Dear Mr. Wall:

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# 259855.

The Texas Tech University Police Department and Texas Tech University Student Judicial Services (collectively the "university") received identical requests from the same requestor for all records concerning the requestor. You state that the university has released some of the requested information. You claim that other responsive information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and have reviewed the information you submitted.

We first note that the United States Department of Education Family Policy Compliance Office (the "DOE") recently informed this office that the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code, does not permit state and local educational authorities to disclose to this office, without parental consent,

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<sup>1</sup>You also state that, as permitted by these requests for information, the university has withheld home addresses and telephone numbers and social security numbers contained in the requested records. We note that under section 552.147 of the Government Code, "[t]he social security number of a living person is excepted from" required public disclosure under the Act. Gov't Code § 552.147(a). Moreover, section 552.147(b) authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act.

unredacted, personally identifiable information contained in education records for the purpose of our review in the open records ruling process under the Act.<sup>2</sup> Consequently, state and local educational authorities that receive a request for education records from a member of the public under the Act must not submit education records to this office in unredacted form, that is, in a form in which “personally identifiable information” is disclosed. *See* 34 C.F.R. § 99.3 (defining “personally identifiable information”). We note that FERPA is not applicable to law enforcement records maintained by the university police department that were created by the department for a law enforcement purpose. *See* 20 U.S.C. § 1232g(a)(4)(B)(ii); 34 C.F.R. §§ 99.3, 99.8. However, you also have submitted unredacted education records maintained by university Student Judicial Services for our review. These records are subject to FERPA. *See* 34 C.F.R. § 99.8(b)(2)(i). Because our office is prohibited from reviewing these education records to determine whether appropriate redactions under FERPA have been made, we will not address the applicability of FERPA to any of the submitted records. Such determinations under FERPA must be made by the educational authority in possession of the education records.<sup>3</sup> However, we will consider the applicability of your claimed exceptions to disclosure to the submitted information.

Section 552.101 of the Government Code excepts from public disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. You raise section 552.101 in conjunction with 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). The informer’s privilege protects 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. *See Open Records Decision Nos. 515 at 3 (1998), 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.” *See 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 the informer’s identity. *See Open Records Decision No. 549 at 5 (1990)*.

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<sup>2</sup>A copy of this letter may be found on the Office of the Attorney General’s website: [http://www.oag.state.tx.us/opinopen/og\\_resources.shtml](http://www.oag.state.tx.us/opinopen/og_resources.shtml).

<sup>3</sup>In the future, if the university does obtain parental consent to submit unredacted education records and the university seeks a ruling from this office on the proper redaction of those education records in compliance with FERPA, we will rule accordingly.

You state that the highlighted portions of the submitted documents identify individuals who reported alleged violations of law to law enforcement or other appropriate authorities at the university. Based on your representations and our review of the submitted information, we conclude that the information in Exhibits D and E that identifies the individuals in question is protected by the common-law informer's privilege. The university may withhold that information, which we have marked, under section 552.101 of the Government Code.<sup>4</sup>

Section 552.130 of the Government Code excepts from public disclosure information that relates to a motor vehicle operator's or driver's license or permit issued by an agency of this state.<sup>5</sup> *See* Gov't Code § 552.130(a)(1). We have marked a Texas driver's license number that the university must withhold under section 552.130.

In summary: (1) the university may withhold the marked information in Exhibits D and E that identifies the informers under section 552.101 of the Government Code in conjunction with the common-law informer's privilege; and (2) the marked Texas driver's license number must be withheld under section 552.130 of the Government Code. The rest of the submitted information must be released.<sup>6</sup> This ruling does not address the applicability of FERPA to the submitted information. Should the university determine that all or portions of the submitted information consist of "education records" that must be withheld under FERPA, the university must dispose of that information in accordance with FERPA, rather than the Act.

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

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<sup>4</sup>As we are able to make this determination, we need not address your claim under section 552.108 of the Government Code.

<sup>5</sup>Unlike other exceptions to disclosure, this office will raise section 552.130 on behalf of a governmental body, as this exception is mandatory and may not be waived. *See* Gov't Code §§ 552.007, .352; Open Records Decision No. 674 at 3 n.4 (2001) (mandatory exceptions).

<sup>6</sup>We note that the submitted documents also contain Texas driver's license and motor vehicle information relating to the requestor that the university would be required to withhold from the public under section 552.130. *See* Gov't Code § 552.130(a)(1)-(2). Because that exception protects personal privacy, the requestor has a right of access to his own driver's license and motor vehicle information under section 552.023 of the Government Code. *See id.* § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). Should the university receive another request for these same records from a person who would not have a right of access to the requestor's private information, the university should resubmit these records and request another decision. *See* Gov't Code §§ 552.301(a), .302.

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).

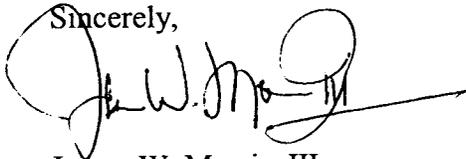
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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 Dep't of Pub. 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 Office of the Attorney General 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. 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,

A handwritten signature in black ink, appearing to read "J. W. Morris, III", with a long horizontal flourish extending to the right.

James W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/sdk

Ref: ID# 259855

Enc: Submitted documents

c: Mr. Halston T. Smith  
411-B Carpenter-Wells  
Texas Tech University  
Lubbock, Texas 79406  
(w/o enclosures)