



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 1, 2010

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

OR2010-01528

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# 368780.

The Mansfield Independent School District (the "district"), which you represent, received a request for information pertaining to a named individual. You state that you have released some of the requested information to the requestor. You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.135 of the Government Code. You state you have notified certain individuals to whom the requested information relates pursuant to section 552.304 of the Government Code. *See* Gov't Code § 552.304 (any person may submit written comments stating why information at issue in request for Attorney General ruling should or should not be released). As of the date of this letter, we have not received any arguments from interested third parties regarding the information at issue. 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." Gov't Code § 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). 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). However, witnesses who provide information in the course of an investigation but do not make the initial report of the violation are not informants for purposes of claiming the informer's privilege. 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). We note the informer's privilege does not apply where the informant's identity is known to the individual who is the subject of the complaint. *See* Open Records Decision No. 208, 1-2 (1978).

You assert that the entirety of Exhibit C, or alternatively the identifying information of the informers and witnesses, is protected under the informer's privilege. However, in this instance, the submitted documents reveal that the requestor knows the identity of the initial complainant whose identity you seek to withhold. Thus, the district may not withhold the initial complainant's identifying information under the informer's privilege. Further, we note the remaining information you seek to withhold consists of statements made by witnesses who provided information in the course of the investigation at issue, rather than to actual informants. Accordingly, you have failed to establish that the informer's privilege is applicable to the information at issue. Therefore, the department may not withhold any of the submitted information under section 552.101 on that basis.

You also contend the submitted information is excepted under section 552.135 of the Government Code, which 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.

(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(a)-(b). You indicate the complainant's identifying information is excepted under section 552.135 because the complainant reported a possible violation of law to the district. In this instance, however, the requestor, who is a former district employee, is also the complainant listed in the report. Section 552.135(c)(2) provides that an informer's identifying information is not excepted from disclosure "if the informer is an employee or former employee who consents to disclosure of the employee's or former employee's name[.]" *Id.* § 552.135(c)(2). Thus, the district may not withhold the complainant's

identifying information under section 552.135. Further, we note the remaining information pertains to witness statements made in the course of the investigation at issue. Section 552.135 protects an informer's identity, but it does not generally encompass protection for witness statements. Thus, we find you have failed to demonstrate how any of the submitted information reveals the identity of an informer for the purposes of section 552.135. Accordingly, the district may not withhold any of the submitted information under section 552.135 of the Government Code. As you raise no further exceptions to disclosure, the submitted information must be released to the requestor.<sup>1</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,



James McGuire  
Assistant Attorney General  
Open Records Division

JM/cc

Ref: ID# 368780

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

---

<sup>1</sup> We note that the information being released contains confidential information to which the requestor has a right of access. See Gov't Code § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual asks governmental body to provide him with information concerning himself). Therefore, if the district receives another request for this same information from a different requestor, then the district should again seek a decision from this office.