



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 18, 2011

Mr. John A. Kazen
Kazen, Meurer, & Pérez, L.L.P.
P.O. Box 6237
Laredo, Texas 78042-6237

OR2011-02548

Dear Mr. Kazen:

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# 409548.

The Laredo Independent School District (the "district"), which you represent, received a request for all school records of a named individual. You state you have released some of the requested information. You claim the submitted 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.

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 information protected by other statutes, such as section 58.007 of the Family Code. Section 58.007(c) is applicable to records of juvenile delinquent conduct or conduct indicating a need for supervision that occurred on or after September 1, 1997. *See* Fam. Code § 51.03 (defining "delinquent conduct" and "conduct indicating a need for supervision" for purposes of title 3 of the Family Code). For purposes of section 58.007(c), "child" means a person who is ten years of age or older and under seventeen years of age. *See id.* § 51.02(2). The relevant language of section 58.007 reads as follows:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

- (1) if maintained on paper or microfilm, kept separate from adult files and records;

(2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and

(3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapters B, D, and E.

...

(e) Law enforcement records and files concerning a child may be inspected or copied by a juvenile justice agency as that term is defined by Section 58.101, a criminal justice agency as that term is defined by Section 411.082, Government Code, the child, and the child's parent or guardian.

...

(j) Before a child or a child's parent or guardian may inspect or copy a record or file concerning the child under Subsection (e), the custodian of the record or file shall redact:

...

(2) any information that is excepted from required disclosure under Chapter 552, Government Code, or other law.

Id. § 58.007(e), (e), (j)(2). The submitted information relates to alleged delinquent conduct that occurred after September 1, 1997; therefore, the submitted information is subject to section 58.007(c). However, we note that the requestor is the authorized representative of a parent of the juvenile offender. Accordingly, this requestor has a right to inspect or copy any law enforcement records concerning the juvenile under section 58.007(e). *Id.* § 58.007(e). However, section 58.007(j)(2) provides information subject to any other exception to disclosure under the Act or other law must also be redacted. *Id.* § 58.007(j)(2). Therefore, we will consider your arguments against disclosure of the submitted information.

Section 552.135 of the Government Code provides:

(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 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. Section 552.135 protects the initial informer's identity, but does not encompass protection for witness information or statements. You indicate the submitted information contains identifying information of informers who reported possible violations of criminal law to the district's police department. Based on your representation and our review, we conclude the district must withhold the informers' identifying information, which we have marked, under section 552.135 of the Government Code. However, you have not demonstrated the remaining employees at issue are informants for the purposes of section 552.135. Therefore, the information that identifies these remaining employees is not excepted from disclosure under section 552.135.

You also raise section 552.101 of the Government Code 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 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 8 John H. Wigmore, Evidence in Trials at Common Law, § 2374, at 767 (J. 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*. 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)*.

You state the remaining information identifies employees of the district who assisted in the preparation of the case reports and reported possible violations of the Penal Code to the district's police department. We note witnesses who provided information in the course of an investigation, but do not make the initial report of a violation, are not informants for the purposes of the common-law informer's privilege. In this instance, none of the remaining information reveals the identity of an informer for purposes of section 552.101 of the Government Code. Upon review, we find you have failed to establish the common-law informer's privilege is applicable to the information at issue, and the district may not withhold any portion of the remaining information under section 552.101 on that basis.

We note the remaining information includes information that is excepted from disclosure under section 552.102(a) of the Government Code.¹ Section 552.102(a) excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Gov't Code § 552.102(a). The Texas Supreme Court recently held section 552.102(a) excepts from disclosure the dates of birth of state

¹The Office of the Attorney General will raise a mandatory exception like section 552.102 on behalf of a governmental body, but ordinarily will not raise other exceptions.

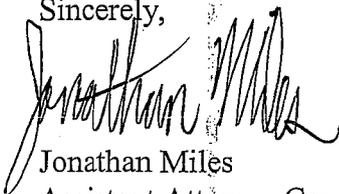
employees in the payroll database of the Texas Comptroller of Public Accounts. *Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex. & The Dallas Morning News, Ltd.*, No. 08-0172, 2010 WL 4910163 (Tex. Dec. 3, 2010) (Dec. 20, 2010, motions for reconsideration and rehearing pending). We have marked the information the district must withhold under section 552.102(a) of the Government Code.

In summary, the district must withhold the informers' identifying information we have marked under section 552.135 of the Government Code and the information we have marked under section 552.102(a) of the Government Code. The remaining information must be released.²

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, 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,



Jonathan Miles
Assistant Attorney General
Open Records Division

JM/em

Ref: ID# 409548

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²The requestor in this instance has a special right of access to the of the information being released. See Fam. Code § 58.007(e); Gov't Code § 552.023(a). Because such information is confidential with respect to the general public, if the district receives another request for this information from a different requestor, the district must again seek a ruling from this office.