



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 28, 2013

Ms. Ellen H. Spalding  
Counsel for the Klein Independent School District  
Rogers, Morris & Grover, LLP  
5718 Westheimer Road, Suite 1200  
Houston, Texas 77057

OR2013-08830

Dear Ms. Spalding:

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# 488503.

The Klein Independent School District (the "district"), which you represent, received a request for all district police department records involving the requestor for a specified time period.<sup>1</sup> 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 representative sample of information.<sup>2</sup>

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

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<sup>1</sup>You state the district sought and received clarification of the requested information from the requestor. *See* Gov't Code § 552.222 (if request for information is unclear, governmental body may ask requestor to clarify request).

<sup>2</sup>We assume the "representative sample" of information submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than those submitted to this office.

Code § 552.101. This section encompasses information protected by other statutes, such as section 261.201 of the Family Code, which provides, in part:

(a) [T]he following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under [chapter 261 of the Family Code] and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under [chapter 261 of the Family Code] or in providing services as a result of an investigation.

Fam. Code § 261.201(a). You contend the submitted information is confidential under section 261.201. Upon review, we find the information we have marked was used or developed in an investigation by the district's police department under chapter 261 of the Family Code, so as to fall within the scope of section 261.201(a). *See id.* §§ 101.003(a) (defining "child" for purposes of Fam. Code title 5), 261.001(1), (4) (defining "abuse" and "neglect" for purposes of Fam. Code ch. 261). You do not indicate the district's police department has adopted a rule that governs the release of this type of information. Therefore, we assume no such regulation exists. Given that assumption, we conclude the district must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.<sup>3</sup> *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). However, we find you have failed to demonstrate the remaining information was used or developed in an investigation of alleged or suspected child abuse or neglect under chapter 261. Therefore, the district may not withhold the remaining information under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.

Section 552.101 of the Government Code also encompasses information protected by the common-law informer's privilege, which has long been recognized by Texas courts. *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 the subject of the information does not already know the informer's identity. *See* Open Records Decision Nos. 515 at 3 (1988), 208 at 1-2 (1978). The privilege protects the identities of individuals who report

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<sup>3</sup>As our ruling is dispositive, we need not address your remaining arguments for this information.

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). However, individuals who provide information in the course of an investigation but do not make the initial report of the violation are not informants for the purposes of claiming the informer’s privilege.

You seek to withhold some of the submitted information under the common-law informer’s privilege. You state the information at issue identifies an individual who reported possible violations of the Penal Code to the district’s police department. You state the alleged violations are within the scope of the district police department’s enforcement authority. You do not inform us that the identity of the informer has been revealed to the subject of the information. Upon review, we determine the district may withhold the identifying information of the informer, which we have marked, under section 552.101 of the Government Code in conjunction with the common-law informer’s privilege. However, we find the remaining information at issue does not identify an informer. Accordingly, the district may not withhold any of the remaining information at issue under section 552.101 in conjunction with the informer’s privilege.

Section 552.135 of the Government Code provides in part:

(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].

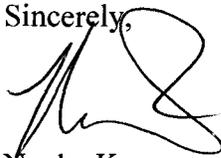
Gov’t Code § 552.135(a)-(b). We note the legislature limited the protection of section 552.135 to the identity of a person who reports a possible violation of civil, criminal, or regulatory law. Additionally, individuals who provide information in the course of an investigation, but do not make the initial report are not informants for purposes of section 552.135 of the Government Code. You state the remaining information contains personally identifiable information of informers who reported possible violations of criminal law. Upon review, we find no portion of the remaining information contains the identity of an informer for section 552.135 purposes. Therefore, the district may not withhold any of the remaining information on the basis of section 552.135 of the Government Code.

In summary, the district must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code and may withhold the information we have marked under section 552.101 of the Government Code in conjunction with the common-law informer's privilege. The district must release the remaining information.

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,



Nneka Kanu  
Assistant Attorney General  
Open Records Division

NK/bhf

Ref: ID# 488503

Enc. Submitted documents

c: Requestor  
(w/o enclosures)