



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

August 6, 2015

Mr. Darin Darby  
Counsel for Edgewood Independent School District  
Escamilla & Poneck, L.L.P.  
700 North Saint Mary's Street, Suite 850  
San Antonio, Texas 78205

OR2015-16294

Dear Mr. Darby:

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# 574635 (I.S.D. ORR# 155).

The Edgewood Independent School District (the "district"), which you represent, received a request for information pertaining to the requestor's termination from the district and a specified police report. You state the district is providing some of the requested information to the requestor. You claim the submitted information is excepted from disclosure under sections 552.101, 552.103, 552.107, 552.108, and 552.135 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted information.

Section 552.103 of the Government Code provides, in part, the following:

(a) Information is excepted from [required public disclosure] if it is information relating to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party.

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<sup>1</sup>Although you raise section 552.022 of the Government Code, this provision is not an exception to disclosure. See Gov't Code § 552.022 (enumerating categories of information not excepted from disclosure unless made confidential under Act or other law).

(c) Information relating to litigation involving a governmental body or an officer or employee of a governmental body is excepted from disclosure under Subsection (a) only if the litigation is pending or reasonably anticipated on the date that the requestor applies to the officer for public information for access to or duplication of the information.

Gov't Code § 552.103(a), (c). A governmental body that claims an exception to disclosure under section 552.103 has the burden of providing relevant facts and documentation sufficient to establish the applicability of this exception to the information that it seeks to withhold. To meet this burden, the governmental body must demonstrate that (1) litigation was pending or reasonably anticipated on the date the governmental body received the request for information, and (2) the information at issue is related to the pending or anticipated litigation. *See Univ. of Tex. Law Sch. v. Tex. Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.—Austin 1997, orig. proceeding); *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.—Houston [1st Dist.] 1984, writ ref'd n.r.e.). The governmental body must meet both prongs of this test for information to be excepted from disclosure under section 552.103(a). *See Open Records Decision No. 551 at 4 (1990).*

This office has long held that “litigation” for purposes of section 552.103 includes “contested cases” conducted in a quasi-judicial forum. *See Open Records Decision Nos. 474 (1987), 368 (1983), 336 (1982), 301 (1982).* In determining whether an administrative proceeding is conducted in a quasi-judicial forum, some of the factors this office considers are whether the administrative proceeding provides for discovery, evidence to be heard, factual questions to be resolved, the making of a record, and whether the proceeding is an adjudicative forum of first jurisdiction with appellate review of the resulting decision without a re-adjudication of fact questions. *See Open Records Decision No. 588 (1991).*

You state, and submit documentation showing, the day before the district received the instant request, the requestor filed a grievance letter challenging his termination by the district. The submitted documentation indicates the district received this letter on the same date as the present request for information. Accordingly, you contend litigation was pending at the time of the request because the requestor was involved in the district’s administrative grievance process for at-will employees pursuant to the “District Board Policy DCD (LOCAL).” You indicate the administrative hearing process at issue constitutes litigation for the purposes of section 552.103. We understand the administrative process provides for the making of a record for the district’s board’s consideration, and, at the hearing, an employee may have an attorney or representative present, hear the evidence supporting the reason for nonrenewal, cross-examine adverse witnesses, and present evidence. We further understand an employee may appeal the board’s decision to the Texas Commissioner of Education and an employee must exhaust all remedies provided by the district for resolving complaints before the employee may file suit in court. Based on your representations and our review, we find the district’s administrative hearing process is conducted in a quasi-judicial forum and, thus, constitutes litigation for purposes of section 552.103. You explain the submitted information

relates to the pending litigation because it pertains to the requestor's termination by the district. Based on your representations, the submitted documentation, and our review of the submitted information, we find litigation was pending when the district received the request for information and the submitted information is related to the pending litigation for the purposes of section 552.103.

However, some of the information at issue pertains to alleged criminal activity. We note information normally found on the front page of an offense or incident report is generally considered public. *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976); *see also* Open Records Decision No. 127 (1976). This office has stated basic information about a crime may not be withheld under section 552.103 even if it is related to the litigation. Open Records Decision No. 362 (1983). Thus, we find the basic offense information from the submitted incident report of the district's police department (the "department") may not be withheld on the basis of section 552.103. Basic information refers to the information held to be public in *Houston Chronicle*, and includes, among other items, an identification and description of the complainant, but does not include the identity of a witness who is not the complainant. *See* 531 S.W.2d at 186-87; ORD 127. Therefore, with the exception of basic information, the district may withhold the submitted information under section 552.103.<sup>2</sup>

We note that once the information has been obtained by all parties to the anticipated litigation, through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision No. 349 at 2 (1982). We also note that the applicability of section 552.103(a) ends when the litigation is concluded. Attorney General Opinion MW-575 (1982) at 2; Open Records Decision Nos. 350 at 3 (1982), 349 at 2.

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. This exception 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); *Hawthorne v. State*, 10 S.W.2d 724, 725 (Tex. Crim. App. 1928). The privilege protects from disclosure 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. Open Records Decision Nos. 515 at 3 (1988), 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

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<sup>2</sup>As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information, except to note section 552.108 of the Government Code does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov't § Code 552.108(c).

duty of inspection or of law enforcement within their particular spheres.” 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 that informer’s identity. Open Records Decision No. 549 at 5 (1990). However, individuals who provide information in the course of an investigation are not informants for the purposes of claiming the informer’s privilege.

You claim the information at issue identifies individuals who reported possible violations of the law and/or district policy to the department and district officials. Upon review, we find the basic information does not identify an individual who made a report to the department or district officials for purposes of the informer’s privilege. Thus, we conclude the district may not withhold the basic information under section 552.101 on that basis.

Section 552.135 of the Government Code provides, in relevant part:

(a) “Informer” means a student or a 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].

(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

(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.

Gov’t Code § 552.135(a)-(c). 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 *id.* § 552.301(e)(1)(A). Additionally, individuals who provide information in the course

of an investigation, but do not report a violation are not informants for purposes of section 552.135 of the Government Code. You assert the information at issue identifies employees who reported alleged violations of criminal laws and district policy to the department and district officials. Upon review, we find the district has failed to demonstrate the basic information reveals the identity of an informer for purposes of section 552.135. Therefore, the district may not withhold the basic information on that basis.

In summary, with the exception of basic information, which must be released, the district may withhold the submitted information under section 552.103 of the Government Code.

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.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml), 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Lindsay E. Hale  
Assistant Attorney General  
Open Records Division

LEH/dls

Ref: ID# 574635

Enc. Submitted documents

c: Requestor  
(w/o enclosures)