



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

August 7, 2015

Ms. Jeanne C. Collins  
General Counsel  
El Paso Independent School District  
6531 Boeing Drive  
El Paso, Texas 79925

OR2015-16335

Dear Ms. Collins:

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# 574857 (ORR# 2015.220).

The El Paso Independent School District (the "district") received a request for a specified letter and police reports pertaining to the requestor. The district indicates it has released some of the requested information, but claims the submitted information is excepted from disclosure under sections 552.101 and 552.135 of the Government Code. We have considered the claimed exception and reviewed the submitted representative sample of information.<sup>1</sup>

Initially, the district informs us some of the requested information was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2015-13764 (2015). We have no indication the law, facts, or circumstances on which the prior ruling was based have changed. Accordingly, the district must continue to rely on Open Records Letter No. 2015-13764 as a previous determination and withhold or release the identical information in accordance with that ruling.<sup>2</sup> We will address the district's

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<sup>1</sup>We assume the "representative sample" of records 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 that submitted to this office.

<sup>2</sup>*See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

arguments against the release of the submitted information not encompassed by Open Records Letter No. 2015-13764.

Section 552.135 of the Government Code provides in pertinent 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). 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 the 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). We note section 552.135 protects an informer's identity, but it does not generally encompass protection for witness statements. In this instance, you assert section 552.135 protects the submitted information because it reveals the identity of an individual who made a report of alleged violations of the Code of Ethics and Standard Practices for Texas Educators, section 247.2 of title 19 of the Texas Administrative Code. Based on your representations and our review, we conclude the district must withhold the information we have marked under section 552.135 of the Government Code.<sup>3</sup> However, we find you have not demonstrated how any of the remaining information identifies an informer for purposes of section 552.135. Therefore, the district may not withhold any of the remaining responsive information on that basis.

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. This section 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 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 report does not already know their identities. Open Records Decision Nos. 515 at 2-3 (1988), 434 at 1-2 (1986), 208 at 1-2 (1978). For the informer's privilege to apply, the report must be of a violation of a criminal or civil statute. *See* Open Records Decision Nos. 582 at (1990), 515 at 3-4. The privilege affords protection to individuals who report violations of statutes to criminal law enforcement agencies, as well as those who report violations of statutes with civil or criminal

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<sup>3</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

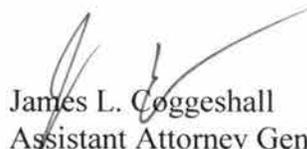
penalties to “administrative officials having a duty of inspection or of law enforcement within their particular spheres.” Open Records Decision No. 279 at 1-2 (1981) (citing 8 John H. Wigmore, *Evidence in Trials at Common Law*, § 2374, at 767 (J. McNaughton rev. ed. 1961)). However, witnesses who provide information in the course of an investigation but do not make a report of the violation are not informants for the purposes of the informer’s privilege. Upon review, we find the district has not demonstrated any portion of the remaining information identifies an informer for purposes of the common-law informer’s privilege. Therefore, the district may not withhold any portion of the remaining information under section 552.101 on the basis of the common-law informer’s privilege.

To conclude, the district must continue to rely on Open Records Letter No. 2015-13764 as a previous determination and withhold or release the identical information in accordance with that ruling. The district must withhold the information we have marked under section 552.135 of the Government Code. 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.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,



James L. Coggeshall  
Assistant Attorney General  
Open Records Division

JLC/cbz

Ref: ID# 574857

Enc. Submitted documents

c: Requestor  
(w/o enclosures)