



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

June 27, 2016

Ms. Ramona Soto  
Attorney  
Fort Worth Independent School District  
100 North University Drive, Suite SW 172  
Fort Worth, Texas 76107

OR2016-14516

Dear Ms. Soto:

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# 616054.

The Fort Worth Independent School District (the "district") received a request for six categories of information pertaining to a named employee. You state you have released some information to the requestor. You state you have redacted information pursuant to the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232g(a).<sup>1</sup> See Gov't Code §§ 552.026 (incorporating FERPA into the Act), .114 (excepting from disclosure "student records"); Open Records Decision No. 539 (1990) (determining the same analysis applies under section 552.114 of the Government Code and FERPA). You also state you have redacted information pursuant to Open Records Decision No. 684 (2009).<sup>2</sup> You claim the submitted information is excepted from disclosure under sections 552.101 and 552.135

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<sup>1</sup>The United States Department of Education Family Policy Compliance Office (the "DOE") has informed this office FERPA does not permit state and local educational authorities to disclose to this office, without parental or an adult student's consent, unredacted, personally identifiable information contained in education records for the purpose of our review in the open records ruling process under the Act. The DOE has determined FERPA determinations must be made by the educational authority in possession of the educational records. We have posted a copy of the letter from the DOE on the Attorney General's website at <https://www.texasattorneygeneral.gov/files/og/20060725usdoe.pdf>.

<sup>2</sup>Open Records Decision No. 684 is a previous determination issued by this office authorizing all governmental bodies to withhold certain categories of information without the necessity of requesting an attorney general decision.

of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we must address the district's procedural obligations under the Act. Section 552.301 describes the procedural obligations placed on a governmental body that receives a written request for information it wishes to withhold. Pursuant to section 552.301(b), the governmental body must ask for the attorney general's decision and state the exceptions that apply within ten business days after receiving the request. *See* Gov't Code § 552.301(b). In this instance, you state, and provide documentation showing, the district received the request for information on April 4, 2016. Accordingly, the district's ten-business-day deadline was April 18, 2016. However, the envelope in which you requested a decision was postmarked April 19, 2016. *See id.* § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Consequently, we find the district failed to comply with the requirements of section 552.301 in requesting this decision from our office.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the requirements of section 552.301 results in the legal presumption the requested information is public and must be released unless a compelling reason exists to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); see also Open Records Decision No. 630 (1994). Generally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third party interests are at stake. Open Records Decision No. 150 at 2 (1977). The district seeks to withhold the submitted information under section 552.101 of the Government Code in conjunction with the common-law informer's privilege. The purpose of the common-law informer's privilege is to protect the flow of information to a governmental body, rather than to protect a third person. Thus, the informer's privilege, unlike other claims under section 552.101, may be waived. *See* Open Records Decision No. 549 at 6 (1990). Therefore, the district's assertion of the informer's privilege does not provide a compelling reason for non-disclosure under section 552.302, and the district may not withhold the information at issue under section 552.101 of the Government Code on that basis. However, as section 552.135 of the Government Code can make information confidential under the Act, we will consider the district's argument under this section.

Section 552.135 of the Government Code 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 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). Additionally, individuals who provide information in the course of the investigation, but do not report a violation of law, are not informants for purposes of section 552.135 of the Government Code.

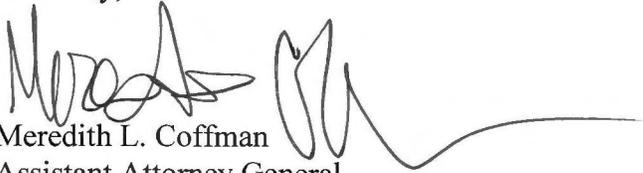
The district claims the submitted information reveals the identity of an informer who reported a possible violation of Title VII of the Civil Rights Act and discrimination on the basis of sex, 29 C.F.R. pt. 1604. Upon review, we find the district must withhold the information we have marked under section 552.135 of the Government Code. However, the district has not demonstrated the remaining information identifies an informer for the purposes of section 552.135. Therefore, we find the district may not withhold any of the remaining information under section 552.135 of the Government Code.

In summary, 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,

  
Meredith L. Coffman  
Assistant Attorney General  
Open Records Division

MLC/bw

Ref: ID# 616054

Enc. Submitted documents

c: Requestor  
(w/o enclosures)