



January 21, 2015

Ms. Jeanne C. Collins  
General Counsel  
El Paso Independent School District  
P.O. Box 20100  
El Paso, Texas 79998-0100

OR2015-01163

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# 550710 (EPISD ORR #2014.478).

The El Paso Independent School District (the "district") received a request for information pertaining to a named individual, to include reprimands, evaluations, or warnings made during a specified time period, any complaints made regarding a specified topic during the same specified time period, and information pertaining to a specified investigation. You state the district is releasing some information to the requestor. You claim portions of the submitted information are 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. We have also received and considered comments from the requestor. *See Gov't Code § 552.304* (permitting interested third party to submit to attorney general reasons why requested information should or should not be released).

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 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].

*Id.* § 552.135. 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 this 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 witnesses or witness statements. In this instance, you claim the information you have marked reveals the identity of an informer who reported possible violations of the Educator Code of Ethics, section 247.2 of title 19 of the Texas Administrative Code. *See* 19 TAC § 247.2. Based on your representation and our review, we conclude the district must withhold the information we have marked under section 552.135 of the Government Code.<sup>1</sup> However, we find you have failed to demonstrate how any portion of the remaining information reveals the identity of an informer for purposes of section 552.135 of the Government Code. Therefore, the district may not withhold any portion of the remaining information on that basis.

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 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 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 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 protects the informer's statement only to the extent necessary to protect the informer's identity. *See* Open Records Decision No. 549 at 5 (1990). Upon review, we find you have failed to demonstrate how any portion of the remaining information reveals the identity of an informer for purposes of the informer's privilege. Therefore, the district may not withhold any portion of the remaining information under section 552.101 of the Government Code in conjunction with the

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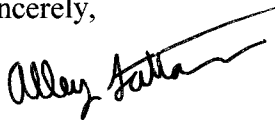
<sup>1</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

common-law informer's privilege. As you raise no other exceptions to disclosure, 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,

A handwritten signature in black ink, appearing to read "Alley Latham", with a stylized flourish at the end.

Alley Latham  
Assistant Attorney General  
Open Records Division

AKL/dls

Ref: ID# 550710

Enc. Submitted documents

c: Requestor  
(w/o enclosures)