



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 10, 2015

Mr. Orlando "Jay" Juarez, Jr.
Counsel for the United Independent School District
J. Cruz & Associates, LLC
216 West Village Boulevard, Suite 202
Laredo, Texas 78041

OR2015-16427

Dear Mr. Juarez:

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# 574911.

The United Independent School District (the "district"), which you represent, received a request for a specified incident report. We understand the district has redacted information pursuant to section 552.130(c) of the Government Code.¹ The district claims some of the submitted information is excepted from disclosure under sections 552.101 and 552.135 of the Government Code. We have considered the exceptions the district claims and reviewed the submitted information.

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 exception encompasses the 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 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

¹We note section 552.130(c) of the Government Code allows a governmental body to redact the information described in section 552.130(a) without the necessity of seeking a decision from the attorney general. *See* Gov't Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e).

identity. See Open Records Decision No. 208 at 1-2 (1978). The informer’s 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.” 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)). 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 (1988).

The district states the information it has marked reveals the identities of informers who reported a possible violation of section 22.01 of the Penal Code to the district’s police department. The district explains a violation of section 22.01 of the Penal Code is a Class A misdemeanor punishable by fine or confinement. There is no indication the subject of the complaint knows the identities of the individuals at issue. Based on the district’s representations and our review, we conclude the information we have marked identifies the informer at issue; thus, the district may withhold the information we have marked under section 552.101 of the Government Code in conjunction with the common-law informer’s privilege.² However, we find the remaining information at issue does not identify an informer for the purposes of the informer’s privilege. Thus, the district may not withhold any of the remaining information it has marked under section 552.101 of the Government Code in conjunction with the common-law informer’s privilege.

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. 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.

²As our ruling is dispositive, we need not address the district’s remaining argument against disclosure of this information.

The district claims the remaining information it has marked reveals the identities of informers who reported a possible violation of section 22.01 of the Penal Code. 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 it has marked identifies an informer for the purposes of section 552.135. Therefore, we find the district may not withhold the remaining information it has marked under section 552.135 of the Government Code.

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



David L. Wheelus
Assistant Attorney General
Open Records Division

DLW/bhf

Ref: ID# 574911

Enc. Submitted documents

c: Requestor
(w/o enclosures)