



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 22, 2015

Mr. John A. Kazen
Counsel for the Laredo Independent School District
Kazen, Meurer, & Perez, L.L.P.
P.O. Box 6237
Laredo, Texas 78042

OR2015-26943

Dear Mr. Kazen:

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# 591778.

The Laredo Independent School District (the "district"), which you represent, received a request for a specified investigation report.¹ You claim the submitted information is excepted from disclosure under sections 552.101 and 552.135 of the Government Code. Additionally, you state you have notified third parties of the request.² See Gov't Code § 552.304 (interested third party may submit comments stating why information should or should not be released). We have considered your arguments and reviewed the submitted information.

Section 552.135 of the Government Code provides the following:

¹You indicate the district sought and received clarification of the request for information. See Gov't Code § 552.222(b) (stating if information requested is unclear to governmental body or if large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used); *City of Dallas v. Abbott*, 304 S.W.3d 380 (Tex. 2010) (holding when governmental entity, acting in good faith, requests clarification of unclear or overbroad request for public information, ten-business-day period to request attorney general opinion is measured from date request is clarified or narrowed).

²As of the date of this letter, we have not received comments from any third parties.

(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].

Id. § 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.³ 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.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” *Id.* § 552.101. Section 552.101 encompasses the common-law informer’s privilege, which Texas courts have long recognized. *See Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969). 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. *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)*. 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 claiming the informer’s privilege. The privilege excepts the informer’s statement only to the extent necessary to

³As our ruling is dispositive, we need not address the district’s remaining argument against disclosure of this information.

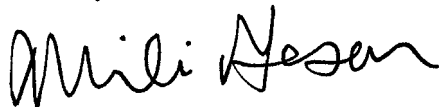
protect that informer's identity. Open Records Decision No. 549 at 5 (1990). Upon review, we find the district has not demonstrated the remaining information identifies an informer for purposes of the common-law informer's privilege. Therefore, the district may not withhold the remaining information at issue under section 552.101 on the basis of the common-law informer's privilege.

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, 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 that reads "Mili Gosar". The signature is written in a cursive, flowing style.

Mili Gosar
Assistant Attorney General
Open Records Division

MG/akg

Ref: ID# 591778

Enc. Submitted documents

c: Requestor
(w/o enclosures)