



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 13, 1997

Ms. Elizabeth A. Lunday
Assistant City Attorney
P.O. Box 850137
Mesquite, Texas 75185-0137

OR97-0842

Dear Ms. Lunday:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 33157.

The Mesquite Police Department (the "department") received a request for all information, including witness statements, confessions, and investigation reports concerning a named individual. The requestor, an investigator for the Texas Education Agency (currently the State Board for Educator Certification (the "board")), states that he seeks this information "for the sole purpose of evaluating the individual's suitability for licensure as an educational professional." You contend that the documents are excepted from public disclosure by section 552.101 and 552.108 of the Government Code. We have considered the exception you claim and have reviewed the submitted documents.

Section 22.082 of the Education Code provides that "[t]he State Board for Educator Certification shall obtain from any law enforcement or criminal justice agency all criminal history record information that relates to an applicant for or holder of a certificate." Additionally, section 411.090 of the Government Code specifically grants a right of access for the board to obtain "criminal history record information" from the Department of Public Safety (the "DPS"). Section 411.090 of the Government Code provides that

(a) The State Board for Educator Certification is entitled to obtain from the department any criminal history record information maintained by the department about a person who has applied to the board for a certificate under Subchapter B, Chapter 21, Education Code.

(b) Criminal history record information obtained by the board under Subsection (a):

(1) may be used for any purpose related to the issuance, denial, suspension, or cancellation of a certificate issued by the board;

(2) may not be released to any person except on court order or with the consent of the applicant for a certificate; and

(3) shall be destroyed by the board after the information is used for the authorized purposes.

Furthermore, pursuant to section 411.087 of the Government Code, an agency which is entitled to obtain CHRI from the DPS is also authorized to “obtain from any other criminal justice agency in this state criminal history record information maintained by that [agency].” Gov’t Code § 411.087(a)(2). For purposes of the Government Code, “criminal history record information” is defined as “information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal charges and their dispositions.” Gov’t Code § 411.082(2).

It is apparent from the submitted materials that the requestor is an investigator for the board and the subject of this request is an applicant for an educator certificate. When read together, section 22.082 of the Education Code and sections 411.087 and 411.090 of the Government Code give the requestor a statutory right of access to a portion of the requested information. *Cf. Brookshire v. Houston Indep. Sch. Dist.*, 508 S.W.2d 675, 678-79 (Tex. Civ. App.--Houston [14th Dist.] 1974, no writ) (when legislature defines term in one statute and uses same term in relation to same subject matter in latter statute, later use of term is same as previously defined). Therefore, you must release information from the requested file that shows the type of allegation made and whether there was an arrest, information, indictment, detention, conviction, or other formal charges and their dispositions.

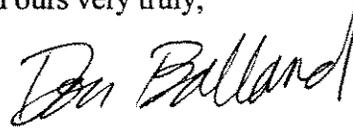
You also argue that portions of the requested information are not “criminal history record information” and are excepted from disclosure by section 552.108 of the Government Code. Gov’t Code § 411.082(2). Section 552.108 excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime,” and “[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution.” Gov’t Code § 552.108; *see Holmes v. Morales*, 924 S.W.2d 920 (Tex. 1996). The documents at issue deal with the detection, investigation, or prosecution of crime. We therefore conclude that any information that is not “criminal history record information” is excepted from disclosure by section 552.108 of the Government Code and may be withheld from this requestor.¹

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous

¹Because we are able to make a determination under section 552.108, we need not address your additional arguments against disclosure. We note, however, that some of the requested information may be confidential by law. Thus, if the department receives a subsequent request for this information, you should re-assert your arguments against disclosure at that time.

determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink that reads "Don Ballard". The signature is written in a cursive, slightly slanted style.

Don Ballard
Assistant Attorney General
Open Records Division

JDB/ch

Ref: ID# 33157

Enclosures: Submitted documents

cc: Mr. Steven A. Franz
Investigator
Texas Education Agency
1701 North Congress Avenue
Austin, Texas 78701-1494
(w/o enclosures)

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