



June 19, 2001

Mr. Richard Hall
Schwartz & Eichelbaum, P.C.
517 Soledad Street
San Antonio, Texas 78205

OR2001-2596

Dear Mr. Hall:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 148585.

The United Independent School District (the “district”), which you represent, received a request for copies of arrest reports or incident reports pertinent to a case in which a former district bus driver was sentenced for indecency with a minor. The requestor also seeks the bus driver’s application for employment and asks for information related to the hiring of another specified employee. Because you state that your request for a ruling only applies to the bus driver, we assume that you have released responsive information pertaining to the other employee. If not, you must do so at this time. *See Gov’t Code §§ 552.301, .302.* You claim that the submitted information is excepted under sections 552.101, 552.026, 552.114, and 552.131 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Exhibits B and C are documents from the district’s police department pertaining to the offense of injury to a child. Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Section 261.201 of the Family Code reads in part as follows:

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

We believe that the information in Exhibits B and C consists of reports, records, and working papers used or developed in an investigation made under chapter 261 of the Family Code. Because you have not cited any specific rule that the district's police department has adopted with regard to the release of this type of information, we assume that no such regulation exists. Given that assumption, we conclude that the submitted information in Exhibits B and C is confidential pursuant to section 261.201 of the Family Code. *See Open Records Decision No. 440 at 2 (1986) (construing predecessor statute)*. Accordingly, you must not release the requested information to the requestor.¹ Because you must withhold the information in Exhibits B and C under section 552.101 in conjunction with section 261.201 of the Family Code, we need not address the applicability of your other asserted exceptions for Exhibits B and C.

You contend that some of the information in Exhibit D is criminal history record information ("CHRI"). Section 552.101 also encompasses common law privacy. Where an individual's criminal history information has been compiled by a governmental entity, the information takes on a character that implicates the individual's right to privacy. *See United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989). Accordingly, you must withhold any CHRI compiled by the district under section 552.101 of the Government Code and the holding in *Reporters Committee*.

You also contend that CHRI must be withheld from disclosure under section 552.101 in conjunction with section 411.085 of the Government Code. Section 411.085 provides that a person commits an offense if the person discloses CHRI to a person who is not entitled to the information. CHRI 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 criminal charges and their dispositions. *See Gov't Code § 411.082(2)(A)*. The information that you have highlighted in the application

¹We note that if the investigation has been referred to the Department of Protective and Regulatory Services (the "department"), a parent who is a requestor may be entitled to access to the department's records. Section 261.201(g) of the Family Code provides that the department, upon request and subject to its own rules:

shall provide to the parent, managing conservator, or other legal representative of a child who is the subject of reported abuse or neglect information concerning the reported abuse or neglect that would otherwise be confidential under this section if the department has edited the information to protect the confidentiality of the identity of the person who made the report and any other person whose life or safety may be endangered by the disclosure.

are questions that are answered by the applicant. This is not the type of information that is included in the definition of CHRI. Accordingly, we conclude that you may not withhold this highlighted information under section 552.101 of the Government Code.

You also claim that a social security number and family member information in the submitted application in Exhibit D should be withheld under section 552.101 in conjunction with common law privacy. Section 552.101 of the Government Code also includes information protected by the common law right of privacy. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 683-85 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The doctrine of common law privacy protects information that contains highly intimate or embarrassing facts about a person's private affairs such that its release would be highly objectionable to a reasonable person and the information must be of no legitimate concern to the public. *Id.* Social security numbers and family member information, however, are not such highly intimate or embarrassing facts about a person's private affairs that their release would be objectionable to a reasonable person. *See* Open Records Decision No. 622 (1994) (providing that social security numbers not excepted under privacy). Therefore, you may not withhold the social security number or family member information under section 552.101 in conjunction with common law privacy.

We note, however, that section 552.117(1) of the Government Code excepts from public disclosure information relating to the home address, home telephone number, social security number, and family member information of a current or former government employee, if the employee elected to withhold this information under section 552.024. Please note that whether a particular piece of information is protected by section 552.117(1) must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Therefore, a proper election must be made prior to the request for information. If the former employee elected prior to the request to keep this information confidential under section 552.024, you must withhold the former employee's home address and telephone number, social security number, and family member information under section 552.117(1) of the Government Code. If no timely election was made, then you may not withhold this information under section 552.117 of the Government Code.

We also note that a social security number may be excepted from disclosure under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). *See* Open Records Decision No. 622 (1994). These amendments make confidential social security numbers and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See id.* However, it is not apparent to us that the social security number was obtained or maintained by the district pursuant to any provision of law enacted on or after October 1, 1990. You have cited no law, nor are we aware of any law, enacted on or after October 1, 1990, that authorizes the district to obtain or maintain a social security number. Therefore, we have no basis for concluding that the social security number at issue was obtained or maintained pursuant to such a statute and is,

therefore, confidential under section 405(c)(2)(C)(viii)(I). We caution the district, however, that section 552.352 of the Government Code imposes criminal penalties for the release of confidential information. Gov't Code § 552.352. Prior to releasing the social security number, the district should ensure that this number was not obtained or maintained by the district pursuant to any provision of law enacted on or after October 1, 1990.

The application in Exhibit D contains information that is excepted under section 552.130 of the Government Code. Section 552.130(a) of the Government Code excepts from disclosure information that relates to a motor vehicle operator's or driver's license or permit issued by an agency of this state or a motor vehicle title or registration issued by an agency of this state. Therefore, you must withhold the marked driver's license number information under section 552.130(a) of the Government Code.

In conclusion, you must withhold Exhibits B and C under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. You must also withhold the marked information in Exhibit D under sections 552.101 and 552.130 of the Government Code. You must withhold the former employee's home address and home telephone number, social security number, and family member information under section 552.117(1) if the employee made a timely section 552.024 election. Otherwise, this information must be released unless the social security number is excepted under federal law. You must release the remaining information in Exhibit D.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental

body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Jennifer Bialek
Assistant Attorney General
Open Records Division

JHB/sdk

Ref: ID# 148585

Encl. Submitted documents

cc: Ms. Meg Guerra
1812 Houston Street
Laredo, Texas 78041
(w/o enclosures)