



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 6, 2005

Ms. Lydia L. Perry
Law Offices of Robert E. Luna, PC
4411 North Central Expressway
Dallas, Texas 75205

OR2005-02974

Dear Ms. Perry:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 221585.

The DeSoto Independent School District (the "district"), which you represent, received a request for "any and all contracts, agreements, memorandums, letters or any other correspondence between the [d]istrict and the Project JAMS and, or its director." You state that you have provided the requestor with all but two pages of the requested information. You claim that the submitted two pages, or portions thereof, are excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

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. This section encompasses information protected by other statutes. Criminal history record information ("CHRI") generated by the National Crime Information Center or by the Texas Crime Information Center is confidential. Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety ("DPS") maintains, except that the DPS may disseminate this information as provided

in chapter 411, subchapter F of the Government Code. *See* Gov't Code § 411.083. Although you indicate that the submitted information contains criminal history information that is confidential under chapter 411, upon review we find that none of the submitted information constitutes CHRI for the purposes of chapter 411.

We note, however, that some of the information is information that would generally be excepted under section 552.101 of the Government Code in conjunction with 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). We have marked the criminal history information that must be withheld under section 552.101 in conjunction with common law privacy.

The district argues that the social security number in the submitted information is confidential under federal law. Social security numbers and related records are 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), if the social security number information was obtained or is maintained by a governmental body pursuant to any provision of law enacted on or after October 1, 1990. *See* Open Records Decision No. 622 (1994). You claim that the social security number in the submitted information falls under the federal Social Security Act because it was obtained pursuant to section 22.083(c) of the Texas Education Code. This provision states that "[a] school district . . . may obtain from any law enforcement or criminal justice agency all criminal history record information that relates to a person: (1) whom the district . . . intends to employ in any capacity; or (2) who has indicated, in writing, an intention to serve as a volunteer with the district[.]" Educ. Code § 22.083(c).

While you state that it was necessary for the district to obtain the social security number at issue in order to perform a background check pursuant to the district's authority under section 22.083(c) of the Texas Education Code, the statute you have provided us with does not specifically require the district to obtain the social security number at issue in order to request criminal history information. Since you have not provided us with a law that requires the district to obtain or maintain the social security number at issue, we conclude that the district may not withhold the social security number pursuant to federal law.

Section 552.130 of the Government Code prohibits the release of 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. *See* Gov't Code § 552.130. Accordingly, the district must withhold the Texas driver's license information you have marked pursuant to section 552.130 of the Government Code.

In summary, the district must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common law privacy. The district

must also withhold the marked Texas driver's license information pursuant to section 552.130 of the Government Code. The remaining information must be released.

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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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).

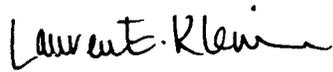
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. Id. § 552.321(a); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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 Texas Building and Procurement 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code

§ 552.325. 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,



Lauren E. Kleine
Assistant Attorney General
Open Records Division

LEK/jev

Ref: ID# 221585

Enc. Submitted documents

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