



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 6, 2006

Mr. David A. Anderson
General Counsel
Office of Legal Services
Texas Education Agency
1701 North Congress Avenue
Austin, Texas 78701

OR2006-03401

Dear Mr. Anderson:

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# 245765.

The Texas Education Agency (the "agency") received a request for charters and charter applications for five specified schools. You claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note that you have only submitted information regarding criminal history record information for our review. As you have not submitted the other requested information for our review, we assume you have released it to the extent that it existed on the date the agency received this request. If you have not released any such records, you must release them to the requestor at this time. *See* Gov't Code §§ 552.301(a), .302.; *see also* Open Records Decision No. 664 (2000) (noting that if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible under circumstances).

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Gov't Code § 552.101. Criminal history record information ("CHRI") generated by the National Crime Information Center or by the Texas Crime Information Center is confidential. Part 20 of title 28 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.

Under section 411.097 of the Government Code, a charter school is authorized to obtain CHRI that the school is required or authorized to obtain under subchapter C of chapter 22 of the Education Code. *See* Educ. Code § 22.083 (allowing a charter school to obtain criminal history record information that relates to the school's employees, applicants, and volunteers). Also under section 411.097, a charter school may not release or disclose CHRI except as provided by section 411.097(d). *See* Gov't Code § 411.097(d) (stating CHRI may not be released or disclosed to any person, other than the individual who is the subject of the information, the Texas Education Agency, the State Board for Educator Certification, or the chief personnel officer of the transportation company); *see also* Gov't Code § 411.087. You state that the submitted information consists of CHRI obtained from DPS by a charter school pursuant to section 411.097. Furthermore, you state that the submitted information was received by the agency from a charter school pursuant to section 411.097(d). Accordingly, the agency must withhold the submitted information under section 552.101 of the Government Code in conjunction with chapter 411 of the Government Code.

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); *Texas 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 Office of the Attorney General 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,



Brian J. Rogers
Assistant Attorney General
Open Records Division

BJR/krl

Ref: ID# 245765

Enc. Submitted documents

c: Ms. Latoyia McDonald
Walk With Me Community Improvement Center
c/o David A. Anderson
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(w/o enclosures)