



**ATTORNEY GENERAL OF TEXAS**  
**GREG ABBOTT**

September 18, 2006

Ms. Leticia D. McGowan  
School Attorney  
Dallas Independent School District  
3700 Ross Avenue  
Dallas, Texas 75204-5491

OR2006-10802

Dear Ms. McGowan:

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# 258253.

The Dallas Independent School District (the "district") received a request for "all background information that was used by the Legal Review Committee to grant criminal history waivers for individuals from Jan. 1, 2000 to present[.]" You claim that the submitted information is excepted from disclosure under sections 552.101, 552.107, 552.114, 552.117, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that the requestor previously received information pertaining to the criminal history waivers of nine named individuals pursuant to a previous request to the district, in response to which this office issued Open Records Letter No. 2006-05763 (2006). We understand the requestor's current request to exclude this previously requested information. Therefore, the submitted information relating to the nine named individuals is not responsive to the instant request and need not be released to her. Moreover, we do not address such information in this ruling.

Next, we note that the United States Department of Education Family Policy Compliance Office (the "DOE") recently informed this office that the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232(a), does not permit state and local educational

authorities to disclose to this office, without parental consent, unredacted, personally identifiable information contained in education records for the purpose of our review in the open records ruling process under the Act.<sup>1</sup> Consequently, state and local educational authorities that receive a request for education records from a member of the public under the Act must not submit education records to this office in unredacted form, that is, in a form in which “personally identifiable information” is disclosed. See 34 C.F.R. § 99.3 (defining “personally identifiable information”). You argue that some of the submitted information is protected under FERPA. Because our office is prohibited from reviewing education records to determine whether appropriate redactions under FERPA have been made, we will not address the applicability of FERPA to any of the submitted records. Such determinations under FERPA must be made by the educational authority in possession of the education records.<sup>2</sup> We will, however, address the applicability of the remaining claimed exceptions to the submitted information.

We note that the submitted information includes complaint and arrest warrant affidavits. Article 15.26 of the Code of Criminal Procedure states “[t]he arrest warrant, and any affidavit presented to the magistrate in support of the issuance of the warrant, is public information.” Article 15.04 of the Code of Criminal Procedure provides that “[t]he affidavit made before the magistrate or district or county attorney is called a ‘complaint’ if it charges the commission of an offense.” Crim. Proc. Code art. 15.04. Case law indicates that a complaint can support the issuance of an arrest warrant. See *Janecka v. State*, 739 S.W.2d 813, 822-23 (Tex. Crim. App. 1987); *Villegas v. State*, 791 S.W.2d 226, 235 (Tex. App.—Corpus Christi 1990, pet. ref’d); *Borsari v. State*, 919 S.W.2d 913, 918 (Tex. App.—Houston [14 Dist.] 1996, pet. ref’d) (discussing well-established principle that complaint in support of arrest warrant need not contain same particularity required of indictment). The submitted affidavits reflect that they were presented to the magistrate to support the issuance of arrest warrants. Accordingly, this information, which we have marked, is public under article 15.26 of the Code of Criminal Procedure and must be released.

We additionally note that the submitted information includes a petition for expunction of criminal records, which we have marked. Articles 55.01 through 55.05 of the Code of Criminal Procedure provide for the expunction of criminal records in certain limited circumstances. Article 55.03 prescribes the effect of an expunction order and provides:

When the order of expunction is final:

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<sup>1</sup>A copy of the DOE’s letter can be found on our website at [http://www.oag.state.tx.us/opinopen/og\\_resources](http://www.oag.state.tx.us/opinopen/og_resources).

<sup>2</sup>In the future, if the district does obtain parental consent to submit unredacted education records and the district seeks a ruling from this office on the proper redaction of those education records in compliance with FERPA, we will rule accordingly.

(1) the release, maintenance, dissemination, or use of the expunged records and files for any purpose is prohibited;

(2) except as provided in Subdivision (3) of this article, the person arrested may deny the occurrence of the arrest and the existence of the expunction order; and

(3) the person arrested or any other person, when questioned under oath in a criminal proceeding about an arrest for which the records have been expunged, may state only that the matter in question has been expunged.

Crim. Proc. Code art. 55.03. Article 55.04 imposes sanctions for violations of an expunction order and provides in relevant part:

Sec. 1. A person who acquires knowledge of an arrest while an officer or employee of the state or of any agency or other entity of the state . . . and who knows of an order expunging the records and files relating to that arrest commits an offense if he knowingly releases, disseminates, or otherwise uses the records or files.

*Id.* art. 55.04, § 1. This office has previously determined that the expunction statute prevails over the Act. *See* Open Records Decision No. 457 at 2 (1987) (governmental body prohibited from releasing or disseminating arrest records subject to expunction order, as “those records are not subject to public disclosure under the [Act]”). You do not inform us, however, and the information that you have provided to us does not itself reveal, whether or when the submitted petition for expunction was granted. Nevertheless, to the extent that an order for the expunction of any of the submitted information has been granted, article 55.03 of the Code of Criminal Procedure prohibits the department from releasing any such information to the requestor. To the extent that the submitted information is not subject to such an expunction order, we will address other exceptions to disclosure for this information.

You claim that the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), 42 U.S.C. §§ 1320d-1320d-8, governs the remaining information. At the direction of Congress, the Secretary of Health and Human Services (“HHS”) promulgated regulations setting privacy standards for medical records, which HHS issued as the Federal Standards for Privacy of Individually Identifiable Health Information. *See* HIPAA, 42 U.S.C. § 1320d-2 (Supp. IV 1998) (historical & statutory note); Standards for Privacy of Individually Identifiable Health Information, 45 C.F.R. Pts. 160, 164 (“Privacy Rule”); *see also* Attorney General Opinion JC-0508 at 2 (2002). These standards govern the releasability of protected health information by a covered entity. *See* 45 C.F.R. pts. 160, 164. Under these standards, a covered entity may not use or disclose protected health information, except

as provided by parts 160 and 164 of the Code of Federal Regulations. 45 C.F.R. § 164.502(a).

This office has addressed the interplay of the Privacy Rule and the Act. Open Records Decision No. 681 (2004). In that decision, we noted that section 164.512 of title 45 of the Code of Federal Regulations provides that a covered entity may use or disclose protected health information to the extent that such use or disclosure is required by law and the use or disclosure complies with and is limited to the relevant requirements of such law. *Id.*; see 45 C.F.R. § 164.512(a)(1). We further noted that the Act “is a mandate in Texas law that compels Texas governmental bodies to disclose information to the public.” See Open Records Decision No. 681 at 8 (2004); see also Gov’t Code §§ 552.002, .003, .021. We therefore held that the disclosures under the Act come within section 164.512(a). Consequently, the Privacy Rule does not make information confidential for the purpose of section 552.101 of the Government Code. See *Abbott v. Tex. Dep’t of Mental Health & Mental Retardation*, No. 03-04-00743-CV, 2006 WL 1649003 (Tex. App.—Austin, June 16, 2006, n. p. h.); Open Records Decision No. 681 at 9 (2004); see also Open Records Decision No. 478 (1987) (as general rule, statutory confidentiality requires express language making information confidential). Because the Privacy Rule does not make confidential information that is subject to disclosure under the Act, the district may withhold protected health information from the public only if the information is confidential under other law or an exception in subchapter C of the Act applies.

Next, we address your claim that portions of the submitted information are governed by the Medical Practice Act (“MPA”), chapter 159 of the Occupations Code. Section 159.002 provides in pertinent part:

(b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.

(c) A person who receives information from a confidential communication or record as described by this chapter, other than a person listed in Section 159.004 who is acting on the patient’s behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

Occ. Code § 159.002( b), (c). The MPA governs access to medical records. Open Records Decision No. 598 (1991). The MPA requires that any subsequent release of medical records be consistent with the purposes for which a governmental body obtained the records. Open Records Decision No. 565 at 7 (1990). Moreover, information that is subject to the MPA includes both medical records and information obtained from those medical records. See

Occ. Code § 159.002(a), (b), (c); Open Records Decision No. 598 (1991). We have marked the information that is subject to the MPA and may only be released in accordance therewith.

Next, we address your claim that all of the responsive information is made confidential by section 411.097 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.” Gov’t Code § 552.101. This section encompasses information made confidential under section 411.097 of the Government Code. 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.

A school district may obtain from CHRI from the DPS if authorized by section 411.097 and subchapter C, chapter 22 of the Education Code; however, a school district may not release CHRI except as provided by section 411.097(d). *See* Gov’t Code § 411.097(d); Educ. Code § 22.083(c)(1) (authorizing school district to obtain from any law enforcement or criminal justice agency all CHRI relating to school district employee); *see also* Gov’t Code § 411.087. Section 411.087 authorizes a school district to obtain CHRI from the F.B.I. or any other criminal justice agency in this state. *Id.* Thus, any CHRI generated by the federal government or another state may not be made available to the requestor except in accordance with federal regulations. *See* Open Records Decision No. 565 (1990). Furthermore, any CHRI the district obtained from the DPS or any other criminal justice agency in this state must be withheld under section 552.101 of the Government Code in conjunction with section 411.097(d) of the Government Code. *See* Educ. Code § 22.083(c)(1). However, the definition of CHRI does not include driving record information maintained by DPS under chapter 521 of the Transportation Code. *See Id.* § 411.082(2)(B).

You explain that “the requested documentation that DISD possesses that is responsive to the current request was received pursuant to Texas Government Code § 411.097 and Texas Education Code Chapter 22, Subchapter C[.]” Upon review, we have marked the information that constitutes CHRI obtained from the DPS or another criminal justice agency and must be withheld under section 552.101 in conjunction with section 411.097. However, we find that none of the remaining information was obtained from the DPS or any other criminal justice agency in this state; therefore, section 411.097(d) is inapplicable to the remaining information and the district may not withhold any of the remaining information under section 552.101 on that basis.

Section 411.192 of the Government Code governs the release of all information maintained by the DPS concerning the licensure of individuals to carry a concealed handgun, and provides as follows:

[DPS] shall disclose to a criminal justice agency information contained in its files and records regarding whether a named individual or any individual named in a specified list is licensed under this subchapter. [DPS] shall, on written request and payment of a reasonable fee to cover costs of copying, disclose to any other individual whether a named individual or any individual whose full name is listed on a specified written list is licensed under this subchapter. Information on an individual subject to disclosure under this section includes the individual's name, date of birth, gender, race, and zip code. Except as otherwise provided by this section and by Section 411.193, all other records maintained under this subchapter are confidential and are not subject to mandatory disclosure under the open records law, Chapter 552, Government Code, except that the applicant or license holder may be furnished a copy of disclosable records on request and the payment of a reasonable fee.

Gov't Code § 411.192. The submitted documents contain information concerning an individual's concealed handgun license. In this instance, the circumstances of the request do not meet the access requirements of section 411.192. Therefore, the district must withhold this information, which we have marked, pursuant to section 552.101 in conjunction with section 411.192 of the Government Code.

Next, we note that the submitted records contain fingerprint information that is excepted from disclosure under section 552.101 in conjunction with chapter 560 of the Government Code. Chapter 560 of the Government Code provides that a governmental body may not release fingerprint information except in certain limited circumstances. *See* Gov't Code §§ 560.001 (defining "biometric identifier" to include fingerprints), .002 (prescribing manner in which biometric identifiers must be maintained and circumstances in which they can be released), .003 (providing that biometric identifiers in possession of governmental body are exempt from disclosure under Act). You do not inform us, and the submitted information does not indicate, that section 560.002 permits the disclosure of the submitted fingerprint information. Therefore, we find that the submitted fingerprint information, which we have marked, is confidential under section 560.003 and must be withheld under section 552.101 of the Government Code.

Next, we address your claim under section 21.355 of the Education Code. Section 21.355 provides that "[a] document evaluating the performance of a teacher or administrator is confidential." Educ. Code § 21.355. This office has interpreted section 21.355 to apply to any document that evaluates, as that term is commonly understood, the performance of a

teacher or an administrator. *See* Open Records Decision No. 643 (1996). In Open Records Decision No. 643, we determined that for purposes of section 21.355, the word "teacher" means a person who is required to and does in fact hold a teaching certificate under subchapter B of chapter 21 of the Education Code or a school district teaching permit under section 21.055 and who is engaged in the process of teaching, as that term is commonly defined, at the time of the evaluation. *See* Open Records Decision No. 643 at 4. We also determined that the word "administrator" in section 21.355 means a person who is required to and does in fact hold an administrator's certificate under subchapter B of chapter 21 of the Education Code and is performing the functions of an administrator, as that term is commonly defined, at the time of the evaluation. *Id.*

You assert that the submitted documents contains evaluations confidential under section 21.355 of the Education Code. You indicate that the information pertains to teachers or administrators who held the appropriate certifications at the time the evaluations were conducted. Upon review, we have marked the information that constitutes confidential evaluations under section 21.355. The district must withhold this information under section 552.101 to the extent the information pertains to teachers or administrators who held the appropriate certifications at the time the evaluations were conducted. We find, however, that none of the remaining information at issue consists of a document that evaluates the performance of a teacher or administrator for the purposes of section 21.355. We therefore conclude that the district may not withhold any of the remaining information under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code.

We note that section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs as types of information considered intimate and embarrassing. *Id.* at 683. This office has found that the following types of information are excepted from required public disclosure under common law privacy: some kinds of medical information or information indicating disabilities or specific illnesses, *see* Open Records Decision No. 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps); and credit reports, financial statements, and other personal financial information, *see* Open Records Decision No. 523 (1989). A compilation of an individual's criminal history is highly embarrassing information, the publication of which would be highly objectionable to a reasonable person. *Cf. U. S. Dep't of Justice v.*

*Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (when considering prong regarding individual's privacy interest, court recognized distinction between public records found in courthouse files and local police stations and compiled summary of information and noted that individual has significant privacy interest in compilation of one's criminal history). Furthermore, we find that a compilation of a private citizen's criminal history is generally not of legitimate concern to the public.

We have marked a representative sample of the information that constitutes compiled criminal history information that must be withheld pursuant to section 552.101. We have marked additional information that the district must withhold under section 552.101 of the Government Code in conjunction with common-law privacy. However, in this case, the remaining information is background investigation information that was used as part of the district's hiring process and, presumably, played a role in its employment decision. Information about the qualifications of a public employee is of legitimate concern to the public. Open Records Decision No. 542 (1990). Thus, none of the remaining information is confidential under the doctrine of common-law privacy and the district may not withhold any of the remaining information under section 552.101 on that basis.

Section 552.102(b) of the Government Code excepts from public disclosure "a transcript from an institution of higher education maintained in the personnel file of a professional public school employee[.]" Gov't Code § 552.102(b). This exception further provides, however, that "the degree obtained or the curriculum on a transcript in the personnel file of the employee" are not excepted from disclosure. *Id* ; *see also* Open Records Decision No. 526 (1989). Thus, except for those portions of the documents that reveal the degree obtained and the courses taken, the district must withhold the transcripts we have marked in the submitted information under section 552.102(b) of the Government Code.

You assert that some of the information is excepted under section 552.107. Section 552.107(1) of the Government Code protects information coming within the attorney-client privilege. When asserting the attorney-client privilege, a governmental body has the burden of providing the necessary facts to demonstrate the elements of the privilege in order to withhold the information at issue. Open Records Decision No. 676 at 6-7 (2002). First, a governmental body must demonstrate that the information constitutes or documents a communication. *Id.* at 7. Second, the communication must have been made "for the purpose of facilitating the rendition of professional legal services" to the client governmental body. TEX. R. EVID. 503(b)(1). The privilege does not apply when an attorney or representative is involved in some capacity other than that of providing or facilitating professional legal services to the client governmental body. *In re Texas Farmers Ins. Exch.*, 990 S.W.2d 337, 340 (Tex. App.—Texarkana 1999, orig. proceeding) (attorney-client privilege does not apply if attorney acting in a capacity other than that of attorney). Governmental attorneys often act in capacities other than that of professional legal counsel, such as administrators, investigators, or managers. Thus, the mere fact that a communication

involves an attorney for the government does not demonstrate this element. Third, the privilege applies only to communications between or among clients, client representatives, lawyers, and lawyer representatives. TEX. R. EVID. 503(b)(1)(A), (B), (C), (D), (E). Thus, a governmental body must inform this office of the identities and capacities of the individuals to whom each communication at issue has been made. Lastly, the attorney-client privilege applies only to a *confidential* communication, *id.* 503(b)(1), meaning it was “not intended to be disclosed to third persons other than those to whom disclosure is made in furtherance of the rendition of professional legal services to the client or those reasonably necessary for the transmission of the communication.” *Id.* 503(a)(5). Whether a communication meets this definition depends on the *intent* of the parties involved at the time the information was communicated. *Osborne v. Johnson*, 954 S.W.2d 180, 184 (Tex. App.—Waco 1997, no writ). Moreover, because the client may elect to waive the privilege at any time, a governmental body must explain that the confidentiality of a communication has been maintained. Section 552.107(1) generally excepts an entire communication that is demonstrated to be protected by the attorney-client privilege unless otherwise waived by the governmental body. *See Huie v. DeShazo*, 922 S.W.2d 920, 923 (Tex. 1996) (privilege extends to entire communication, including facts contained therein).

You seek to withhold a portion of the submitted information under the attorney-client privilege. Upon review of your arguments and the information at issue, we agree that a portion of the submitted information is excepted under section 552.107. We have marked the information that may be withheld under this exception. However, you have failed to establish how any of the remaining information falls under this exception, and thus, none of the remaining information may be withheld under section 552.107.

Next, we address your claim that portions of the submitted information are excepted from disclosure under section 552.117 of the Government Code. Section 552.117(a)(1) excepts from disclosure the current and former home addresses and telephone numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024. Gov’t Code § 552.117(a)(1). . Section 552.117 also encompasses a personal cellular mobile telephone number, provided that the cellular mobile phone service is not paid for by a governmental body. *See Open Records Decision No. 506 at 5-6 (1988)* (Gov’t Code § 552.117 not applicable to cellular mobile phone numbers paid for by governmental body and intended for official use). However, an individual’s personal post office box number is not a “home address” for purposes of section 552.117, and therefore may not be withheld under section 552.117. *See Open Records Decision No. 622 at 4 (1994)* (purpose of section 552.117 is to protect public employees from being harassed at home). Further, section 552.117 does not apply to business telephone numbers. Whether information is protected by section 552.117(a)(1) must be determined at the time the request for it is made. *See Open Records Decision No. 530 at 5 (1989)*.

Pursuant to section 552.117(a)(1), the district must withhold personal information that pertains to a current or former employee of the district who elected, prior to the district's receipt of the request for information, to keep such information confidential. Such information may not be withheld for individuals who did not make a timely election. We understand you to represent that the employees at issue made timely elections under section 552.024. Therefore, we have marked representative samples of personal information that must be withheld under section 552.117(a)(1).

Section 552.117(a)(2) of the Government Code exempts from disclosure "information that relates to the home address, home telephone number, or social security number" of a peace officer, or that reveals whether the peace officer has family members, regardless of whether the officer complies with section 552.024 or section 552.1175.<sup>3</sup> See Gov't Code § 552.117(a)(2). Accordingly, we conclude that the district must withhold the information we have marked pursuant to section 552.117(a)(2).

We also note that the district may be required to withhold a small portion of the information pursuant to section 552.1175 of the Government Code. Section 552.1175 applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure and provides in pertinent part:

(b) Information that relates to the home address, home telephone number, or social security number of an individual to whom this section applies, or that reveals whether the individual has family members is confidential and may not be disclosed to the public under this chapter if the individual to whom the information relates:

- (1) chooses to restrict public access to the information; and
- (2) notifies the governmental body of the individual's choice on a form provided by the governmental body, accompanied by evidence of the individual's status.

Gov't Code § 552.1175(b). The submitted records contain the home address and telephone number of a peace officer employed by another agency. Thus, if the officer at issue made a proper section 552.1175 election, the district must withhold the information that we have marked pursuant to section 552.1175. Otherwise, the district must release the information that we have marked pursuant to section 552.1175 of the Government Code.

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<sup>3</sup>Section 552.117(a)(2) applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure. See Crim. Proc. Code art. 2.12.

Section 552.130 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. Gov't Code §552.130(a)(1) - (2). We note that section 552.130 is applicable only to Texas driver's license and motor vehicle information and does not encompass out-of-state driver's license or motor vehicle information. We have marked a representative sample of information that the district must withhold under section 552.130.

Next, we note that the submitted information contains email addresses subject to section 552.137 of the Government Code.<sup>4</sup> This section excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body" unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See* Gov't Code § 552.137(a)-(c). Section 552.137 does not apply to a government employee's work e-mail address because such an address is not that of the employee as a "member of the public," but is instead the address of the individual as a government employee. Some of the submitted e-mail addresses, however, are personal and do not appear to be of a type specifically excluded by section 552.137(c). You do not inform us that the individuals to whom these e-mail addresses pertain have affirmatively consented to their release. Accordingly, we conclude that the district must withhold these e-mail addresses, a representative sample of which we have marked, pursuant to section 552.137.

Section 552.142 of the Government Code pertains to records of certain deferred adjudications. This section provides:

(a) Information is excepted from the requirements of Section 552.021 if an order of nondisclosure with respect to the information has been issued under Section 411.081(d).

(b) A person who is the subject of information that is excepted from the requirements of Section 552.021 under this section may deny the occurrence of the arrest and prosecution to which the information relates and the exception of the information under this section, unless the information is being used against the person in a subsequent criminal proceeding.

Gov't Code § 552.142. Section 411.081(d) of the Government Code authorizes a person placed on deferred adjudication for certain offenses to petition the court "for an order of nondisclosure," which prohibits criminal justice agencies from disclosing to the public

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<sup>4</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

criminal history record information related to the offense giving rise to the deferred adjudication. *Id.* § 411.081(d). Under this provision, a criminal justice agency may only disclose criminal history record information that is the subject of the order to other criminal justice agencies, for criminal justice or regulatory purposes; non-criminal justice agencies listed in section 411.081(i); or the person who is the subject of the order. *Id.*

In this instance, the submitted information includes an order of nondisclosure that was issued pursuant to section 411.081(d) of the Government Code prohibiting the release of certain information. We understand that the district received this information as a non-criminal justice agency authorized to receive such information under section 411.081(i). *See* Gov't Code 411.081(i) (listing school district as non-criminal justice agency authorized to receive information protected by an order of nondisclosure). The requestor is not an entity or individual entitled to receive information protected by section 411.081. Thus, the portion of the submitted information we have marked is excepted from disclosure under section 552.142 and must be withheld by the district.

The social security numbers in the submitted information are excepted from disclosure under section 552.147 of the Government Code. Section 552.147 provides that "[t]he social security number of a living person is excepted from" required public disclosure under the Act. We have marked a representative sample of social security numbers the district must withhold the under section 552.147 of the Government Code.<sup>5</sup>

Finally, we note that some of the submitted information includes notice of copyright protection. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Attorney General Opinion JM-672 (1987). A governmental body must allow inspection of materials that are subject to copyright protection unless an exception applies to the information. *Id.* If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit. *See* Open Records Decision No. 550 (1990). Accordingly, in releasing the information at issue the district must release copyrighted information only in accordance with copyright law.

To summarize, the district must withhold the following: medical records marked under the MPA; the teacher evaluations marked under section 552.101 in conjunction with section 21.355 of the Education Code; the documents marked under section 552.101 in conjunction with common-law privacy; the criminal history record information marked under section 552.101 in conjunction with section 411.097(d); the concealed handgun information

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<sup>5</sup>We note that section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. Gov't Code § 552.147(b).

marked pursuant to section 552.101 in conjunction with section 411.192; the marked fingerprint information pursuant to section 552.101 in conjunction with section 560.003; the marked transcripts, except for those portions of the documents that reveal the degree obtained and the courses taken, pursuant to section 552.102(b); the information marked under sections 552.117(a)(1) and 552.117(a)(2), and section 552.1175 if the district received notice under this section; the information marked under section 552.130; the e-mail addresses marked under section 552.137; the information we have marked under section 552.142; and the social security numbers marked under section 552.147. In addition, the district must withhold any information for which an order for expunction has been granted under article 55.03 of the Code of Criminal Procedure. The district may withhold the information we have marked under section 552.107. The remaining information must be released; however, in releasing information that is protected by copyright, the district must comply with applicable copyright law.

This ruling does not address the applicability of FERPA to the submitted information. Should the district determine that all or portions of the submitted information consists of "education records" that must be withheld under FERPA, the district must dispose of that information in accordance with FERPA, rather than the Act.

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,



Michael A. Pearle  
Assistant Attorney General  
Open Records Division

MAP/krl

Ref: ID# 258253

Enc. Submitted documents

c: Tawnell D. Hobbs  
Reporter  
The Dallas Morning News  
508 Young Street  
Dallas, Texas 75202  
(w/o enclosures)