



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 27, 2007

Mr. C. Robert Heath
Bickerstaff Heath Pollan & Caroom, L.L.P.
Austin Independent School District
816 Congress Avenue, Suite 1700
Austin, Texas 78701

OR2007-03326

Dear Mr. Heath:

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# 274230.

The Austin Independent School District (the "district"), which you represent, received the following two requests for information: (1) "[m]aterials that [district] Board of Trustees received to evaluate applicants for the District 2 vacancy, including district committee attendance survey and criminal background checks," and (2) the background check on a named applicant for the district Board of Trustees. You state that you have released some of the requested information to the first requestor. 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.

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 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 Federal Bureau of Investigation 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 information at issue is CHRI “obtained during a background check of applicants for appointment to fill a vacancy on the [d]istrict’s board of trustees” under the authority of section 22.083 of the Education Code. Upon review, we agree that the submitted information constitutes CHRI obtained from the DPS or another criminal justice agency and must be withheld under section 552.101 of the Government Code in conjunction with section 411.097 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,



Holly R. Davis
Assistant Attorney General
Open Records Division

HRD/krl

Ref: ID# 274230

Enc. Submitted documents

c: Ms. Raven L. Hill
Educator Reporter
Austin American Statesman
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(w/o enclosures)