



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 2, 2008

Ms. Beth Trimble
Director of Communications
DeSoto Independent School District
200 East Belt Line Road
DeSoto, Texas 75155

OR2008-04405

Dear Ms. Trimble:

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# 306359.

The DeSoto Independent School District (the "district") received a request for 1) information regarding background checks of Eric Williams and the employees of Out the Box Entertainment (the "individuals"), 2) correspondence between specified district administrators and the individuals, and 3) documentation of payment to Eric Williams or Out the Box Entertainment. You inform us that you notified Eric Williams of the district's receipt of the request for information and of his right to submit arguments to this office as to why the requested information should not be released. *See Gov't Code § 552.304* (interested party may submit comments stating why information should or should not be released). 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. We have also received and considered comments submitted by the requestor.¹ *See id.*

Initially, we note that you have only submitted information regarding background checks of the individuals. We assume that, to the extent responsive information pertaining to

¹The requestor asks this office to rule on various points of law outside the ruling process. Making such a ruling would require investigation and resolving questions beyond the scope of a request for an attorney general decision. *See Gov't Code § 552.301*. Thus, this ruling will not address these issues raised by the requestor.

categories two and three of the request existed when the district received the request for information, you have released it to the requestor. If not, then you must do so immediately. *See* Gov't Code §§ 552.006, .301, .302; Open Records Decision No. 664 (2000).

Next, we address your claim that all of the submitted criminal history record information is made confidential by section 411.097(d) 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 protected by other statutes, such as section 411.097 of the Government Code. Section 411.097 provides in relevant part:

a. A school district...is entitled to obtain from the [Texas Department of Public Safety (the "DPS")] criminal history record information maintained by the [DPS] that the district...is required or authorized to obtain under Subchapter C, Chapter 22, Education Code...;

d. Criminal history record information obtained by a school district...under Subsection (a), (b), or (c) may not be released or disclosed to any person, other than the individual who is subject of the information, the Texas Education Agency, the State Board for Educator Certification, or the chief personnel officer of the transportation company, if the information is obtained under Subsection (a)(2).

Gov't Code § 411.097(a), (d). Section 411.097(a) allows a school district to obtain criminal history record information ("CHRI") from the DPS, the Federal Bureau of Investigation (the "FBI"), or another criminal justice agency. *Id. See also id.* §§ 411.082(2), (3) (defining "criminal history record information" and "criminal justice agency" for the purposes of chapter 411 of the Government Code); .087 (authorizing a school district to obtain CHRI from the FBI or any other criminal justice agency in this state and applying the same limitations on the dissemination of CHRI obtained from the DPS to such CHRI). Section 411.097(d) applies to the dissemination of CHRI a school district obtains from the DPS, the FBI, or any other criminal justice agency in this state. *See id.* § 411.097(d); Educ. Code § 22.0835(a) (authorizing school district to obtain from any law enforcement or criminal justice agency or private entity all CHRI relating to school district volunteer); *see also* Gov't Code § 411.087.

You state that the release of the individuals' CHRI would violate section 411.097(d) of the Government Code. In this instance, however, the submitted criminal history information was obtained through a private entity; it was not obtained from the DPS, the FBI, or any other criminal justice agency in this state. Therefore, section 411.097(d) is inapplicable to the submitted CHRI and the district may not withhold it under section 552.101 on that basis.

Section 552.101 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 demonstrated. *Id.* at 681-82. 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. United States 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. In this instance, however, the criminal history background checks were performed on individuals who were proposing to provide mentoring and other services to district students. We find that there is a legitimate public interest in the criminal history of individuals who are working with children in a public school. *See* Educ. Code § 22.0835. Therefore, the submitted criminal history record information may not be withheld under common law privacy.

We note that the submitted information contains Texas driver's license information subject to section 552.130 of the Government Code.² Section 552.130 of the Government Code exempts from disclosure information that "relates to . . . a motor vehicle operator's or driver's license or permit issued by an agency of this state[.]" Gov't Code § 552.130(a)(1). The district must withhold the Texas driver's license information we have marked under section 552.130 of the Government Code.

In summary, the district must withhold the Texas driver's license information we have marked under section 552.130 of the Government Code. The remaining information must be released.³

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

²The Office of the Attorney General will raise a mandatory exception like section 552.130 of the Government Code on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Gov't Code §§ 552.007, .352; Open Records Decision No. 674 at 3 n.4 (2001).

³We note that the submitted information contains social security numbers. 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.

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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, 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 challenge 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,



Laura E. Ream
Assistant Attorney General
Open Records Division

LER/jb

Ref: ID# 306359

Enc. Submitted documents

c: Mr. Jerry Hall
1244 Springbrook Drive
DeSoto, Texas 75115
(w/o enclosures)