ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 15, 2008

Ms. Laura C. Rodriguez
Walsh, Anderson, Brown, Schulze & Aldridge, P.C.
P.O. Box 460606
San Antonio, Texas 78246

OR2008-09610

Dear Ms. Rodriguez:

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# 317536.

The Northside Independent School District (the "district"), which you represent, received three requests for information relating to criminal background checks on the district's employees.[1] You claim that the requested information is excepted from disclosure under sections 552.101, 552.102, 552.116, 552.130, and 552.147 of the Government Code.[2] We have considered the exceptions you claim and have reviewed the representative samples of

[1]KENS-TV requested (1) the number of "hits" received when employees' fingerprints were matched again law enforcement databases; (2) the names of teachers or administrators and any charges involving those individuals; (3) the number of teachers or administrators who refused to be fingerprinted; and (4) the total number of teachers or administrators in the district. The *San Antonio Express-News* requested (1) information relating to criminal offenses committed by current or prospective employees; (2) summary information, including the total number of criminal offenses and type of offense; and (3) "individual records [with] names redacted if required by law." KSAT-TV requested "names, titles, and offenses pertaining to each professional" and the action, if any, that the district is taking on the basis of the information.

[2]We note that the district submitted additional arguments under section 552.101 of the Government Code after the expiration of its fifteen-business-day deadline under section 552.301 of the Government Code. *See* Gov't Code § 552.301(e)(1)(A). Because the applicability of section 552.101 can provide a compelling reason for non-disclosure of information, we will consider all of your arguments under that exception. *See id.* § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ); Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982).

information that you submitted.[3] We assume that the district has released any other types of information that are responsive to these requests, to the extent that such information existed when the district received the requests. If not, then any such information must be released immediately.[4] *See* Gov't Code §§ 552.221, .301, .302; Open Records Decision No. 664 (2000).

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 chapter 411 of the Government Code. Chapter 411 authorizes the Texas Department of Public Safety (the "DPS") to compile and maintain criminal history record information ("CHRI") from law enforcement agencies throughout the state and to maintain access for authorized persons to federal criminal history records. *See id.* §§ 411.042, .087. CHRI is defined as "information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions." *Id.* § 411.082(2).

In 2007, the Legislature enacted section 411.0845 of the Government Code, which provides in relevant part as follows:

> (a) The [DPS] shall establish an electronic clearinghouse and subscription service to provide criminal history record information to a particular person entitled to receive criminal history record information and updates to a particular record to which the person has subscribed under this subchapter.
>
> (b) On receiving a request for criminal history record information from a person entitled to such information under this subchapter, the [DPS] shall provide through the electronic clearinghouse:
>
> > (1) the criminal history record information reported to the [DPS] or the Federal Bureau of Investigation relating to the individual who is the subject of the request; or

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[3]This letter ruling assumes that the submitted representative samples of information are truly representative of the requested information as a whole. This ruling neither reaches nor authorizes the district to withhold any information that is substantially different from the submitted information. *See* Gov't Code §§ 552.301(e)(1)(D), .302; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

[4]We note that the Act does not require a governmental body to release information that did not exist when it received a request or create responsive information. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dism'd); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

> (2) a statement that the individual who is the subject of the request does not have any criminal history record information reported to the [DPS] or the Federal Bureau of Investigation.
>
> . . .
>
> (d) The [DPS] shall ensure that the information described by Subsection (b) is provided only to a person otherwise entitled to obtain criminal history record information under this subchapter. Information collected under this section is confidential and is not subject to disclosure under [the Act].
>
> (e) A person entitled to receive criminal history record information under this section must provide the [DPS] with the following information regarding the person who is the subject of the criminal history record information requested:
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> (1) the person's full name, date of birth, sex, Texas driver's license number or personal identification certificate number, and social security number;
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> (2) a recent electronic digital image photograph of the person and a complete set of the person's fingerprints as required by the [DPS]; and
>
> (3) any other information required by the [DPS].

Id. § 411.0845(a)-(b), (d)-(e). Pursuant to section 22.083(a-1) of the Education Code, a school district is authorized to obtain this CHRI from the DPS. *See* Educ. Code § 22.083(a-1)(1); *see also* Gov't Code § 411.097.

You contend that all of the submitted information is confidential under section 411.0845. You indicate that the district obtained Exhibits AG0001 through AG0017 from the DPS clearinghouse pursuant to section 411.0845 of the Government Code. You assert that the information in the remaining document, Exhibit AG0018, also is confidential because it was derived from Exhibits AG0001 through AG0017. Thus, we understand you to state that Exhibit AG0018 was created by the district. Based on your representations and our review of the information at issue, we conclude that the district must withhold Exhibits AG0001 through AG0017 under section 552.101 in conjunction with section 411.0845 of the Government Code. We find, however, that Exhibit AG0018 does not constitute "[i]nformation collected under [section 411.0845]." *Id.* § 411.0845. We therefore conclude that Exhibit AG0018 is not confidential under section 411.0845 and may not be withheld on that basis under section 552.101. *See* Open Records Decision Nos. 658 at 4 (1998) (statutory confidentiality provision must be express, and confidentiality requirement will not be implied from statutory structure), 649 at 3 (1996) (language of confidentiality provision controls scope of its protection).

You also seek to withhold Exhibit AG0018 under section 552.116 of the Government Code, which provides as follows:

> (a) An audit working paper of an audit of the state auditor or the auditor of a state agency, an institution of higher education as defined by Section 61.003, Education Code, a county, a municipality, a school district, or a joint board operating under Section 22.074, Transportation Code, including any audit relating to the criminal history background check of a public school employee, is excepted from [required public disclosure]. If information in an audit working paper is also maintained in another record, that other record is not excepted from [public disclosure] by this section.
>
> (b) In this section:
>
> > (1) "Audit" means an audit authorized or required by a statute of this state or the United States, the charter or an ordinance of a municipality, an order of the commissioners court of a county, a resolution or other action of a board of trustees of a school district, including an audit by the district relating to the criminal history background check of a public school employee, or a resolution or other action of a joint board described by Subsection (a) and includes an investigation.
> >
> > (2) "Audit working paper" includes all information, documentary or otherwise, prepared or maintained in conducting an audit or preparing an audit report, including:
> >
> > > (A) intra-agency and interagency communications; and
> > >
> > > (B) drafts of the audit report or portions of those drafts.

Gov't Code § 552.116. You state that Exhibit AG0018 is a summary of information that the district obtained in conducting criminal history background checks of its employees. We note that section 22.083 of the Education Code authorizes a school district to obtain criminal history record information relating to its employees. *See* Educ. Code § 22.083(a-1). You contend that Exhibit AG0018 is information pertaining to "an audit by the district relating to the criminal history background check of a public school employee." Gov't Code § 552.116(b)(1). Based on your representations, we understand you to claim that Exhibit AG0018 is an audit working paper. *See id.* § 552.116(b)(2). Having considered your arguments and reviewed the information at issue, we conclude that the district may withhold Exhibit AG0018 on that basis under section 552.116.

In summary: (1) the district must withhold Exhibits AG0001 through AG0017 under section 552.101 of the Government Code in conjunction with section 411.0845 of the Government Code; and (2) the district may withhold Exhibit AG0018 under section 552.116 of the Government Code. As we are able to make these determinations, we need not address your other arguments against disclosure.

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 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). If the governmental body does not file suit over 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).

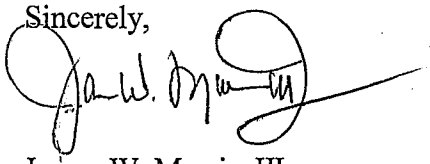
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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,



James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/ma

Ref: ID# 317536

Enc: Submitted documents

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