



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

January 5, 2009

Ms. Leslie McCollom  
O'Hanlon, McCollom & Demerath  
Attorneys and Counselors at Law  
808 West Avenue  
Austin, Texas 78701

OR2009-00065

Dear Ms. McCollom:

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# 330102.

The Austin Independent School District (the "district"), which you represent, received a request for "district-wide numbers only" regarding felony and misdemeanor charges against district employees resulting from criminal history background checks the district performed during a specified time period. In this regard, the requestor states "we specifically do not request names, positions or the campuses of those with records, rather just raw numbers." The requestor also seeks "district-wide figures only" regarding the number of employees disciplined or terminated based on criminal history background check findings during a specified time period. You state the district has no information responsive to the request for the number of employees disciplined or terminated.<sup>1</sup> You claim the submitted information is excepted from disclosure under sections 552.101, 552.103, and 552.116 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information, some of which is a representative sample.<sup>2</sup> We have also received and considered comments submitted by an interested third party. See Gov't Code § 552.304

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<sup>1</sup> The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. See *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990), 452 at 3 (1986), 362 at 2 (1983).

<sup>2</sup> We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and, therefore, does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

(interested party may submit written comments regarding availability of requested information).

Initially, we note that, according to the Supplement to Response of Austin Independent School District to the Request for Production of the Association of Texas Professional Educators (ATPE) and Austin ATPE in the case of *Ass'n of Tex. Prof'l Educators v. Austin Indep. Sch. Dist.*, No. D-1-GN-08-002186 (261<sup>st</sup> Dist. Ct., Travis County, Tex.), the district has previously disclosed district-wide summary data. See AISD Supplement to Resp. to Req. for Produc. of the Ass'n of Tex. Prof'l Educators, AISD00005-8; AISD00010-12; 00020-28; 00032-34; 00037-39; 00044-48; 00052-54; 00060-63; see also Open Records Letter No. 2008-07450A at 2 (2008) (noting district's statements to this office that it released district-wide summary data showing number of employees' records reviewed as of February 20, 2008, and number of these records indicating criminal history, broken down by offense level). Although this previously disclosed information is responsive to the present request, the district has not submitted it to our office with its request for a ruling. If the district has not already disclosed this information to the requestor here, it must do so at this time. See Gov't Code § 552.007(b) (requiring disclosure of information voluntarily made available to public "to any person").

Next, we note that Exhibit 3 is the same document the district submitted as Exhibit C in its request for a decision for which this office issued Open Records Letter No. 2008-06168 (2008). In addition, you state Exhibit 3 is the same document the district submitted as Exhibit 10 in its request for a decision for which this office issued Open Records Letter Nos. 2008-07450 (2008) and 2008-07450A (2008). During discovery in the pending lawsuit over Open Records Letter No. 2008-07450A, *Ass'n of Tex. Prof'l Educators v. Austin Indep. Sch. Dist.*, No. D-1-GN-08-002186, (261<sup>st</sup> Dist.Ct., Travis County, Tex.), the district produced documents it had disclosed to other requestors that were related to criminal background checks. Those documents reveal that, on May 8, 2008, the district disclosed Exhibit C to the requestor in that case in response to our ruling in Open Records Letter No. 2008-06168, rather than filing suit to challenge the ruling as provided in section 552.324 of the Government Code. See AISD Resps. to Plaintiffs Education Austin, Texas AFT, and Texas State Teachers Association's First Set of Interrogs. and Reqs. for Produc. of Docs., Resps. to Reqs. for Produc. 5 & 6 (AISD Responses), AISD00014-19.<sup>3</sup>

Section 552.301(f) of the Government Code states that

[a] governmental body must release . . . requested information and is prohibited from asking for a decision from the attorney general about whether information requested . . . is within an exception under [the Act] if:

<sup>3</sup> We also note that pursuant to Open Records Decision No. 2008-07450A, on June 20, 2008, the district apparently disclosed the same Exhibit C, updated to May 14, 2008, to other requestors. AISD Resps., AISD00047-00057. In AISD00052, the district notes it has provided generic summary information regarding the number of criminal histories and locations to the public on May 8, 2008, May 13, 2008, and June 16, 2008.

(1) the governmental body has previously requested and received a determination from the attorney general concerning the precise information at issue in a pending request; and

(2) the attorney general or a court determined that the information is public information under this chapter that is not excepted by [the Act].

Gov't Code § 552.301(f). The district has previously requested and received a determination from this office that Exhibit 3 is subject to required public disclosure. Thus, section 552.301(f) prohibits the district from seeking another ruling from this office on the disclosure of Exhibit 3 and requires the district to release Exhibit 3 to the requestor here.

Furthermore, section 552.324 of the Government Code provides that if a governmental body does not bring suit challenging an open records ruling within 30 calendar days after the governmental body receives the ruling, "the governmental body shall comply with the decision." *Id.* § 552.324(b). Therefore, because this office determined in Open Records Letter No. 2008-06168 that the same document submitted here as Exhibit 3 is not excepted from required public disclosure under the Act, and because the district did not file suit challenging our decision in Open Records Letter No. 2008-06168, the district must comply with that ruling and release Exhibit 3 to the requestor here. *See id.*

Turning to Exhibit 4, which you state discloses the number of criminal charges in Department of Public Safety ("DPS") clearinghouse reports the district received between January 1, 2008, and March 17, 2008, we note that the only information in that exhibit that is responsive to the instant request is the information contained in column N, which is titled "Level & Degree of Offense." In Open Records Letter No. 2008-07450A, this office determined this information is confidential under section 411.0845 of the Government Code and excepted from required public disclosure under section 552.101 of the Government Code. Therefore, we conclude that the district must withhold the information contained in column N based on section 552.101 in conjunction with section 411.0845 in accordance with our ruling in Open Records Letter No. 2008-07450A.<sup>4</sup> However, this conclusion does not mean that a tally or count of the total number of district employees with a misdemeanor or felony charge is confidential under section 411.0845 as information collected under that section. Likewise, this conclusion does not mean that information in a statistical report that was not obtained from a DPS clearinghouse report is confidential by its inclusion in a statistical report that contains other confidential criminal history information.

<sup>4</sup> The remaining information in Exhibit 4 is not responsive to this request and, consequently, is not subject to required disclosure to this requestor. We do not address the question of the required disclosure of the remaining information in Exhibit 4.

Finally, Exhibit 5 consists of criminal history reports obtained from the DPS clearinghouse. In Open Records Letter No. 2008-07450A, this office determined these reports are confidential under section 411.0845 of the Government Code and therefore excepted from required public disclosure under section 552.101.<sup>5</sup> Therefore, the district must withhold Exhibit 5 from disclosure under section 552.101 in conjunction with section 411.0845 in accordance with Open Records Letter No. 2008-07450A.

In summary, the district must release Exhibit 3 to the requestor in accordance with sections 552.301(f) and 552.324(b) of the Government Code. The district must withhold the information in column N in Exhibit 4 and all of Exhibit 5 under section 552.101 of the Government Code in conjunction with section 411.0845 of the Government Code in accordance with Open Records Letter No. 2008-07450A.<sup>6</sup>

You also ask this office to issue a previous determination permitting "school districts and other governmental entities . . . to properly respond to requests for information derived from the DPS [c]learinghouse reports," without requesting a ruling from this office. We decline to issue such a previous determination at this time. Accordingly, 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

<sup>5</sup> You indicate that the district has received additional clearinghouse reports since the date the district received the information request that is the subject of Open Records Letter No. 2008-07450A.

<sup>6</sup> In light of these conclusions, we need not address your remaining arguments.

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,



Leah B. Wingerson  
Assistant Attorney General  
Open Records Division

LBW/cc

Ref: ID# 330102

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)

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