



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 16, 2009

Mr. Fortunato G. Paredes
Escamilla & Poneck, Inc.
216 West Village Boulevard, Suite 202
Laredo, Texas 78041

OR2009-03408

Dear Mr. Paredes:

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# 337370.

The Clint Independent School District (the "district"), which you represent, received a request for (1) a specified report, (2) notes taken during an interrogation, and (3) several categories of personnel information. You state some information has been released to the requestor. You state information responsive to part two of the request does not exist in the district's records.¹ You claim that the submitted information is excepted from disclosure under section 552.111 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note the submitted information is subject to section 552.022 of the Government Code. Section 552.022 provides that:

the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

¹We 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 dismissed); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108.

Gov't Code § 552.022(a)(1). In this instance, the submitted information consists of a completed investigation made by or for the district. The district must release the completed investigation under section 552.022(a)(1) of the Government Code unless it is excepted from disclosure under section 552.108 of the Government Code or is expressly confidential under other law. Although you assert this information is excepted under section 552.111 of the Government Code, this section is a discretionary exception to disclosure that protects the governmental body's interests and may be waived. *See* Open Records Decision Nos. 470 at 7 (1987) (statutory predecessor to section 552.111 may be waived), 665 at 2 n.5 (2000) (discretionary exceptions generally). As such, section 552.111 is not other law that makes information confidential for purposes of section 552.022, and the submitted investigation may not be withheld pursuant to this exception. We note, however, that the completed investigation contains information subject to sections 552.101, 552.117, and 552.130 of the Government Code.² These sections are other laws for section 552.022 purposes; therefore, we will address the applicability of these exceptions to the submitted information.

Section 552.101 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 chapter 411 of the Government Code, which deems confidential criminal history record information ("CHRI") generated by the National Crime Information Center or by the Texas Crime Information Center. CHRI means "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). 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. *See* Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* at 10-12. Section 411.083 of the Government Code deems confidential CHRI that the Texas Department of Public Safety ("DPS") maintains, except that DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See* Gov't Code § 411.083. Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *See id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* § 411.090-.127. Furthermore, any CHRI

²The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F. A portion of the submitted information is CHRI that falls within the scope of chapter 411. Accordingly, the district must withhold this information, which we have marked, pursuant to section 552.101 of the Government Code in conjunction with federal law and chapter 411 of the Government Code.

Section 552.117(a)(1) of the Government Code excepts from disclosure the home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who request this information be kept confidential under section 552.024 of the Government Code. *See id.* §§ 552.117(a)(1), .024. Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). The district may only withhold information under section 552.117(a)(1) on behalf of former or current employees who have made a request for confidentiality under section 552.024 prior to the date on which the request for information was made. In this instance, we have marked the information that is subject to section 552.117. You do not inform this office that the former district employee whose information we have marked elected to keep his personal information confidential before the district received the instant request for information. We must therefore rule conditionally. If the former employee whose personal information we have marked timely elected to withhold his personal information under section 552.024, the district must withhold the marked information under section 552.117(a)(1). If the employee did not timely elect confidentiality, the district may not withhold the marked information under section 552.117(a)(1).³

Some of the remaining information is subject to section 552.130 of the Government Code, which 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. Gov't Code § 552.130(a)(1). Accordingly, 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 information we have marked under section 552.101 of the Government Code in conjunction with federal law and chapter 411 of the Government Code. To the extent the former employee at issue made a timely election under section 552.024, the district must withhold the information we have marked under section 552.117(a)(1) of the Government Code. The district must withhold the information we have marked under section 552.130 of the Government Code. The remaining information must be released to the requestor.

³We note 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. Gov't Code § 552.147(b).

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Matt Entsminger
Assistant Attorney General
Open Records Division

MRE/jb

Ref: ID# 337370

Enc. Submitted documents

cc: Requestor
(w/o enclosures)