



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

April 4, 2011

Mr. W. Montgomery Meitler
Assistant Counsel
Office of Legal Services
Texas Education Agency
1701 North Congress Avenue
Austin, Texas 78701-1494

OR2011-04535

Dear Mr. Meitler:

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# 414507 (TEA PIR# 14656).

The Texas Education Agency (the "agency") received a request for the complete charter applications for three named schools. You state the agency will release some of the requested information, but claim 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 representative sample of information.¹

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 that another statute makes confidential. You assert some of the submitted information should be withheld under federal law. Federal tax returns and tax return information are confidential under section 6103 of title 26 of the United States Code. *See* 26 U.S.C. § 6103(a); *see also id.* § 6103(b)(1)-(2)

¹We 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.

(defining "return" and "return information"). However, section 6104 of title 26 provides in relevant part as follows:

(d) Public inspection of certain annual returns[.]

(1) In general.— In the case of an organization described in subsection (c) or (d) of section 501 and exempt from taxation under section 501(a) or an organization exempt from taxation under section 527(a)

(A) a copy of--

(i) the annual return filed under section 6033 . . . by such organization,

...

shall be made available by such organization for inspection during regular business hours by any individual at the principal office of such organization and . . .

(B) upon request of an individual made at such principal office . . . a copy of such annual return . . . shall be provided to such individual without charge other than a reasonable fee for any reproduction and mailing costs.

...

(2) 3-year limitation on inspection of returns.— Paragraph (1) shall apply to an annual return filed under section 6011 or 6033 only during the 3-year period beginning on the last day prescribed for filing such return (determined with regard to any extension of time for filing).

Id. § 6104(d)(1)-(2); *see* 26 C.F.R. § 301.6104(d)-1(a). Thus, a section 501(c) or (d) tax-exempt organization must generally make its annual returns available for public inspection for a period of three years from the last day prescribed for filing. The public disclosure requirement of section 6104(d) for a section 501(c) or (d) organization also applies to certain other specified tax filings in addition to the annual return. *See* 26 U.S.C. § 6104(d)(1)(A).

You state the entity at issue in the submitted Form 990 is a section 501(c) tax-exempt organization. You further state the date of filing the Form 990 was more than three years

prior to the date the agency received the request for information. Thus, based on your representations and our review, we determine the three-year inspection period has lapsed regarding the information at issue, and the requestor does not have a right of inspection under section 6104. Therefore, the agency must withhold the submitted Form 990 under section 552.101 of the Government Code in conjunction with section 6103(a) of title 26 of the United States Code.

Section 552.101 also encompasses portions of chapter 411 of the Government Code, which authorizes the Texas Department of Public Safety ("DPS") to compile and maintain criminal history record information ("CHRI") from law enforcement agencies throughout the state and to provide access to authorized persons to federal criminal history records. *See* Gov't Code §§ 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).

Section 411.0845 of the Government Code provides in relevant part

(a) [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, [DPS] shall provide through the electronic clearinghouse:

(1) the [CHRI] reported to [DPS] or the Federal Bureau of Investigation relating to the individual who is the subject of the request; or

(2) a statement that the individual who is the subject of the request does not have any [CHRI] reported to [DPS] or the Federal Bureau of Investigation.

...

(d) [DPS] shall ensure that the information described by Subsection (b) is provided only to a person otherwise entitled to obtain [CHRI] under this subchapter. Information collected under this section is confidential and is not subject to disclosure under [the Act].

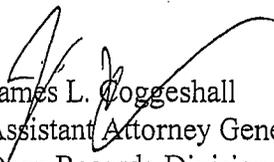
Id. § 411.0845(a)-(b), (d). Pursuant to section 411.0901 of the Government Code, the agency is authorized to obtain this CHRI from DPS. *See id.* 411.0901; *see also* Educ. Code § 22.0832 (agency shall review CHRI of charter school employee). You inform us the agency received the remaining submitted information through the criminal history clearinghouse. Based on your representations and our review, we agree the remaining information is confidential under section 411.0845 of the Government Code and the agency must withhold it under section 552.101 of the Government Code.

To conclude, the agency must withhold the submitted Form 990 under section 552.101 of the Government Code in conjunction with section 6103(a) of title 26 of the United States Code. The agency must withhold the remaining submitted information under section 552.101 in conjunction with section 411.0845 of the Government Code.

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, toll free, at (888) 672-6787.

Sincerely,


James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/tf

Ref: ID# 414507

Enc. Submitted documents

c: Requestor
(w/o enclosures)