



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

January 11, 2016

Mr. Darin Darby  
Counsel for the San Antonio Independent School District  
Escamilla & Poneck, LLP  
700 North St. Mary's Street, Suite 850  
San Antonio, Texas 78205

OR2016-00767

Dear Mr. Darby:

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# 593510.

The San Antonio Independent School District (the "district"), which you represent, received a request for information related to a specified district employee, including the employee's discipline file for a specified time period. You state you have released some information to the requestor. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.102 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

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. Section 552.101 of the Government Code encompasses chapter 411 of the Government Code, which pertains to criminal history record information ("CHRI"). Chapter 411 authorizes the Texas Department of Public Safety (the "DPS") to compile and maintain CHRI from law enforcement agencies throughout the state and to provide access to authorized persons to federal criminal history records. Section 411.0845 of the Government Code provides in relevant part:

- (a) The [DPS] shall establish an electronic clearinghouse and subscription service to provide [CHRI] to a particular person entitled to receive [CHRI]

and updates to a particular record to which the person has subscribed under this subchapter.

(b) On receiving a request for [CHRI] from a person entitled to such information under this subchapter, the [DPS] shall provide through the electronic clearinghouse:

(1) the [CHRI] reported to the [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 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 [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). Section 411.097(b) of the Government Code provides in part that “[a] school district . . . is entitled to obtain from the [DPS CHRI] maintained by the [DPS] that the district . . . is required or authorized to obtain under Subchapter C, Chapter 22, Education Code, that relates to a[n] . . . employee of the district[.]” *Id.* § 411.097(b). Pursuant to section 22.083(a-1) of the Education Code, a school district is authorized to obtain CHRI from the DPS’s electronic clearinghouse. *See* Educ. Code § 22.083(a-1)(1). Section 22.08391(d) of the Education Code states that any CHRI received by a school district is subject to section 411.097(d) of the Government Code. *Id.* § 22.08391(d). Section 411.097(d) provides in relevant part:

(d) [CHRI] obtained by a school district, charter school, private school, service center, commercial transportation company, or shared services arrangement in the original form or any subsequent form:

(1) may not be released to any person except:

(A) the individual who is the subject of the information;

(B) the Texas Education Agency;

(C) the State Board for Educator Certification;

(D) the chief personnel officer of the transportation company, if the information is obtained under Subsection (a)(2); or

(E) by court order[.]

Gov't Code § 411.097(d)(1). You indicate, and the submitted documentation reflects, some of the submitted information is derived from information obtained from the DPS criminal history clearinghouse. Upon review, we find the information we have marked is confidential under section 411.0845 of the Government Code and the district must withhold it under section 552.101 of the Government Code.<sup>1</sup> However, we find you have not demonstrated any of the remaining information constitutes CHRI that is confidential under chapter 411 of the Government Code. Therefore, the district may not withhold any of the remaining responsive information under section 552.101 of the Government Code in conjunction with chapter 411 of the Government Code.

Section 552.101 of the Government Code also encompasses information protected by section 560.003 of the Government Code, which provides, “[a] biometric identifier in the possession of a governmental body is exempt from disclosure under [the Act].” *Id.* § 560.003; *see id.* § 560.001(1) (“biometric identifier” means retina or iris scan, fingerprint, voiceprint, or record of hand or face geometry). There is no indication the requestor has a right of access to the submitted fingerprint under section 560.002. *See id.* § 560.002(1)(A) (governmental body may not sell, lease, or otherwise disclose individual’s biometric identifier to another person unless the individual consents to disclosure). Accordingly, the district must withhold the fingerprint we have marked under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code.

Section 552.102(a) of the Government Code excepts from disclosure “information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.” *Id.* § 552.102(a). The Texas Supreme Court held section 552.102(a) excepts from disclosure the dates of birth of state employees in the payroll database of the Texas Comptroller of Public Accounts. *Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex.*, 354 S.W.3d 336 (Tex. 2010). Accordingly, the district must withhold the employee date of birth we have marked under section 552.102(a) of the Government Code.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and (2) 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 satisfied. *Id.* at 681-82. Types of information considered

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<sup>1</sup>As our ruling is dispositive for this information, we need not address your remaining argument against its disclosure.

intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. Additionally, 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. U.S. 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). Moreover, we find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. We note active warrant information or other information relating to an individual's current involvement in the criminal justice system does not constitute criminal history information for the purposes of section 552.101. *See* Gov't Code § 411.081(b). Additionally, this office has noted the public has a legitimate interest in information that relates to public employees and their conduct in the workplace. *See, e.g.,* Open Records Decision Nos. 562 at 10 (1990) (personnel file information does not involve most intimate aspects of human affairs but in fact touches on matters of legitimate public concern), 444 at 3 (1986) (public has obvious interest in information concerning qualifications and performance of government employees). Upon review, we find portions of the submitted information, which we have marked, satisfy the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the district must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.117(a)(1) of the Government Code excepts from disclosure the home addresses and telephone numbers, emergency contact information, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024 of the Government Code, except as provided by section 552.024(a-1). *See* Gov't Code §§ 552.117(a)(1), .024. Section 552.024(a-1) of the Government Code provides, "A school district may not require an employee or former employee of the district to choose whether to allow public access to the employee's or former employee's social security number." *Id.* § 552.024(a-1). Thus, the district may only withhold under section 552.117 the home address and telephone number, emergency contact information, and family member information of a current or former employee or official of the district who requests this information be kept confidential under section 552.024. Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body's receipt of the request for the information. *See* Open Records Decision No. 530 at 5 (1989). Thus, information may be withheld under section 552.117(a)(1) only on behalf of a current or former employee or official who made a request for confidentiality under section 552.024 prior to the date of the governmental body's receipt of the request for the information. Therefore, to the extent the individual whose information is at issue timely requested confidentiality under section 552.024 of the Government Code, the district must withhold the information we have marked under section 552.117(a)(1) of the Government Code.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release. *See* Gov't Code § 552.130(a). The district must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.

Section 552.147(a-1) of the Government Code provides, "[t]he social security number of an employee of a school district in the custody of the district is confidential." *Id.* § 552.147(a-1). Thus, section 552.147(a-1) makes the social security numbers of school district employees confidential, without such employees being required to first make a confidentiality election under section 552.024 of the Government Code. *Id.* § 552.024(a-1) (school district may not require employee or former employee of district to choose whether to allow public access to employee's or former employee's social security number). Reading sections 552.024(a-1) and 552.147(a-1) together, we conclude section 552.147(a-1) makes confidential the social security numbers of both current and former school district employees. Therefore, the district must withhold the information we have marked under section 552.147(a-1) 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 section 411.0845 of the Government Code. The district must withhold the fingerprint we have marked under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code. The district must withhold the information we have marked under section 552.101 in conjunction with common-law privacy. The district must withhold the employee date of birth we have marked under section 552.102(a) of the Government Code. To the extent the individual whose information is at issue timely requested confidentiality under section 552.024 of the Government Code, the district must withhold the information we have marked under section 552.117(a)(1) of the Government Code. The district must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code. The district must withhold the information we have marked under section 552.147(a-1) of the Government Code. The district must release the remaining information.

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.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml), 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read 'JBW', with a large, sweeping flourish extending upwards and to the right.

Joseph Behnke  
Assistant Attorney General  
Open Records Division

JB/som

Ref: ID# 593510

Enc. Submitted documents

c: Requestor  
(w/o enclosures)