



January 21, 2000

Mr. Jeffrey J. Horner
Bracewell & Patterson, L.L.P.
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OR2000-0198

Dear Mr. Horner:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 131442.

The Dickinson Independent School District (the "district") received a request for all records, including particularly disciplinary records, relating to a former school district employee. The requestor is the individual's current employer, the Alvin Independent School District (Alvin ISD). You claim that the requested information is excepted from disclosure under sections 552.026, 552.102, and 552.114 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We first note that information may be transferred between governmental agencies which are subject to the Public Information Act without destroying the confidential nature of the information. Attorney General Opinion JM-590 (1986); Open Records Decision Nos. 655 (1997), 567 (1990), 561 (1990), 516 (1989). These decisions are grounded in the well settled policy of the state that state agencies should cooperate with each other in the interest of the efficient and economical administration of their statutory duties. *See* Open Records Decision No. 516 (1989). These decisions also recognize that a release to a state agency is not a release to the public for purposes of Government Code section 552.007, which prohibits the selective disclosure of information, or Government Code section 552.352, which provides criminal penalties for the release of information considered to be confidential under the act. *See id.* For example, information that is excepted from public disclosure under the Public Information Act may be transferred between state agencies without destroying its confidential character if the agency to which the information is transferred has the authority to obtain it. *See* Open Records Decision Nos. 516 (1989) (Department of Public Safety transfer to Texas Attorney General's Child Support Enforcement Office authorized by statute), 490 (1988). The principle that information may be transferred without destroying

its confidential character, however, does not apply where a statute makes the information confidential and allows the transfer of the information to only certain enumerated entities. *See* Attorney General Opinion JM-590 (1986); Open Records Decision Nos. 655 (1997), 650 (1996). We believe in this case that the district may transfer to Alvin ISD the transcripts, the two pages summarizing the conference, and the four pages discussing the allegations made against the former employee, with student-identifying information redacted. You may choose to transfer those items without waiving the district's ability to raise discretionary exceptions in the future. If you choose to transfer the information, Alvin ISD will also be charged with maintaining the confidential character of the information. Assuming that you choose not to transfer the information permitted to be transferred, we will consider whether the exceptions you raise apply to except the information from required disclosure.

We first address the transcripts. Section 552.102(b) provides that information is excepted from public disclosure "if it is a transcript from an institution of higher education maintained in the personnel file of a professional public school employee, except that this section does not exempt from disclosure the degree obtained or the curriculum on a transcript in the personnel file of the employee." Thus, although the district may choose to transfer the entire transcripts to Alvin ISD, if it chooses not to transfer the transcripts, it must release the degree obtained and the curriculum.

We next address the criminal history record information ("CHRI") search results submitted to this office for review. Generally, such information is confidential and not subject to disclosure. Section 552.101 excepts from disclosure "information deemed confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Federal regulations prohibit the release of CHRI maintained in state and local CHRI systems to the general public. *See* 28 C.F.R. § 20.21(c)(1) ("Use of criminal history record information disseminated to noncriminal justice agencies shall be limited to the purpose for which it was given."), (2) ("No agency or individual shall confirm the existence or nonexistence of criminal history record information to any person or agency that would not be eligible to receive the information itself."). Section 411.083 of the Government Code provides that any CHRI maintained by the Department of Public Safety ("DPS") is confidential. Gov't Code § 411.083(a). Similarly, CHRI obtained from the DPS pursuant to statute is also confidential and may only be disclosed in very limited instances. *Id.* § 411.084. Section 411.097 states that a school district may not release CHRI "to any person, other than the individual who is the subject of the information, the Texas Education Agency, the State Board for Educator Certification, or the chief personnel officer of the transportation company," if it involves an applicant for employment with a transportation company that contracts with the district. *See* Gov't Code § 411.097(c). Therefore, the district must withhold the CHRI search results from the requestor, and may not choose to transfer such information.

Next submitted are two pages summarizing and discussing a conference with the district's former employee. You assert that section 552.102 excepts this information from required

disclosure. Section 552.102 excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Gov't Code § 552.102(a). In *Hubert v. Harte-Hanks Texas Newspapers*, 652 S.W.2d 546 (Tex. App.--Austin 1983, writ ref'd n.r.e.), the court ruled that the test to be applied to information claimed to be protected under section 552.102 is the same as the test formulated by the Texas Supreme Court in *Industrial Foundation* for information claimed to be protected under the doctrine of common law privacy as incorporated by section 552.101 of the Public Information Act. For information to be protected from public disclosure under the common law right of privacy, the information must meet the criteria set out in *Industrial Found. v. Texas Industrial Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Therefore, information may be withheld from the public when (1) it is highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. *Id.* at 685. We have reviewed the conference summary and letter discussing the conference and conclude that they do not contain any information protected by a common law right of privacy under section 552.102. The information concerns a teacher's behavior which could subject him to dismissal; therefore, there is a legitimate public interest in the information.

However, the conference summary and related letter do contain information that is excepted from public disclosure under a common law privacy right which is implicated when a governmental body releases a compilation of an individual's criminal history. *See United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989). Similarly, open records decisions issued by this office acknowledge this privacy interest. *See* Open Records Decision Nos. 616 (1993), 565 (1990). In addition, those documents contain information which may be excepted from required disclosure by section 552.117(1) of the Government Code. Section 552.117 excepts from required public disclosure, *inter alia*, information revealing whether a public employee has family members if the employee requests that this information be kept confidential under section 552.024. Therefore, section 552.117 allows you to withhold this information if the named teacher requested that this information be kept confidential under section 552.024. *See* Open Records Decision Nos. 622 (1994), 455 (1987). You may not, however, withhold this information if the teacher made the request for confidentiality under section 552.024 after this request for information was made. Whether a particular piece of information is public must be determined at the time the request for it is made. Open Records Decision No. 530 at 5 (1989). We have marked the information the district may choose to withhold from the conference summary and discussion letter; the remainder of those documents must be released.

Finally, the district must not release that part of the requested information that constitutes an education record under the federal Family Educational Rights and Privacy Act of 1974 ("FERPA"), 20 U.S.C. § 1232g, and section 552.026 of the Government Code. Open Records Decision No. 634 (1995). "Education records" are records that

- (i) contain information directly related to a student; and
- (ii) are maintained by an educational agency or institution or by

a person acting for such agency or institution.

20 U.S.C. § 1232g(a)(4)(A). *See also* Open Records Decision Nos. 462 (1987), 447 (1986). Information must be withheld from required public disclosure under FERPA only to the extent "reasonable and necessary to avoid personally identifying a particular student." Open Records Decision Nos. 332 (1982), 206 (1978). You must withhold any information that identifies the student from the last four pages of documents. We have marked the information that must be withheld. If you have further questions as to the applicability of FERPA to information that is the subject of an open records request, you may consult with the United States Department of Education's Family Policy Compliance Office. *See* Open Records Decision No. 634 at 4 n.6, 8 (1995).

In summary, the district must withhold the CHRI and the student-identifying information. The district must release the curriculum and degree obtained from the transcripts and all unredacted portions of the remaining documents. The district may choose to transfer the entire transcripts and the entire conference summary and discussion letter.

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 appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal 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, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental

body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, 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 appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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,



Patricia Michels Anderson
Assistant Attorney General
Open Records Division

PMA/jc

Ref: ID# 131442

Encl. Submitted documents

cc: Mr. Jeffrey L. Rogers
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(w/o enclosures)