



August 7, 2000

Mr. Joe De Los Santos
Walsh, Anderson, Brown, Schulze & Aldridge, P.C.
70 N.E. Loop 410, Suite 800
San Antonio, Texas 78216

OR2000-2967

Dear Mr. De Los Santos:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 137769.

The Natalia Independent School District (the "district"), which you represent, received a request for pre-trip inspections of school buses and information regarding the commercial driver's license, certification, criminal history, drug and alcohol testing, and driving record of a specified school bus driver. You state that the school bus inspections will be disclosed to the requestors. You claim that the remaining requested information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

You contend that documents revealing the results of drug and alcohol testing should be excepted under section 552.101. Section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by statute. The Medical Practice Act ("MPA"), section 159.002(b) of the Occupations Code, provides the following:

A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.

Thus, access to medical records is governed by provisions outside the Public Information Act. See Open Records Decision No. 598 (1991). The MPA provides for both confidentiality of medical records and certain statutory access requirements. Occ. Code §§ 159.002, .003. Medical records may be released only in accordance with the MPA. Open Records Decision No. 598 (1991). Having reviewed the test results, we agree that the

information is a record of the evaluation of a patient by a physician and you must withhold the test results under section 552.101 in conjunction with the MPA.¹

You also assert that criminal history record information (“CHRI”) is excepted from disclosure under section 552.101. Section 552.101 also encompasses information protected by statute. CHRI is made confidential under several provisions of law. Section 22.084 of the Education Code requires school districts to obtain CHRI related to school bus drivers from any law enforcement or criminal justice agency. Federal regulations generally prohibit the subsequent release or disclosure of such CHRI obtained by noncriminal justice agencies. *See* 28 C.F.R. § 20.21(c)(1). School districts are also authorized to obtain CHRI from the Department of Public Safety. Gov’t Code § 411.097. Section 411.097 of the Government Code states that a school district may not release this 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.” Gov’t Code § 411.097(c). Consequently, you must withhold the CHRI obtained pursuant to these statutes.

Further, you also assert that a portion of the submitted documents are excepted from disclosure under section 552.130. Section 552.130(a) of the Government Code 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 or a motor vehicle title or registration issued by an agency of this state. We note, however, that an individual’s driving record is subject to required disclosure. *See* Transp. Code § 521.046 (Department of Public Safety must provide an individual’s driving record to the public upon submission of individual’s driver’s license number or full name and date of birth). Thus, we do not believe that information subject to statutory public access may properly be withheld from the public pursuant to section 552.130. However, we conclude that information in the driving record that relates to a driver’s license must be withheld under section 552.130. We have marked the information that you may withhold under section 552.130.

We note that the driving record contains information about the convictions of the school bus driver. Section 552.101 of the Government Code also encompasses common law privacy. The doctrine of common law privacy protects information that contains highly intimate or embarrassing facts about a person’s private affairs such that its release would be highly objectionable to a reasonable person and the information must be of no legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 683-85 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Where an individual’s criminal history information has been compiled by a governmental entity, the information takes on a character that implicates the individual’s right to privacy. *See United States Dep’t of Justice*

¹Because the tests are excepted under section 159.002(b) of the Occupations Code, we need not address the applicability of section 552.101 and common law privacy.

v. Reporters Comm. for Freedom of the Press, 489 U.S. 749 (1989). In *Reporters Committee*, the Supreme Court balanced the substantial privacy interest in avoiding disclosure of a criminal history compilation against the public interest in its release. *Id.* at 762. The court opined that the public interest in disclosure that would warrant an invasion of personal privacy is a request for official information to “open agency action to the light of public scrutiny.” *Id.* at 772.

In this instance, the request is for the driving record of a school bus driver. An individual’s driving record reflects traffic accidents and convictions for traffic law violations. *See* Transp. Code § 521.142. Although the employee has a privacy interest in his traffic law convictions, there is also a legitimate public interest in the driving record of a school bus driver. *See* Open Records Decision No. 542 (1990) (information about the qualifications of a public employee is of legitimate concern to the public). Thus, in this particular case, you may not withhold the convictions in the driver’s record under section 552.101 based on either common law privacy or *Reporters Committee*.²

In conclusion, you must withhold the drug and alcohol test results under section 552.101 and MPA. Further, you must withhold CHRI in accordance with federal and state laws. We have also marked the information which you must withhold under section 552.130. You must release the remaining information.

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

²For purposes of this ruling, we assume that the state and federal regulations governing criminal history information are not implicated. *See* 28 C.F.R. § 20.21(c)(1); Gov’t Code § 411.083.

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,



Jennifer Bialek
Assistant Attorney General
Open Records Division

JHB/lr

Ref: ID# 137769

Encl. Marked documents

cc: Mr. & Mrs. Blake Curtis
P.O. Box 188
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(w/o enclosures)