OFFICE OF THE ATTORNEY GENERAL · STATE OF TEXAS
JOHN CORNYN

August 21, 2000

Mr. Mario L. Vasquez
Assistant General Counsel
Houston Independent School District
Hattie Mae White Administration Building
3830 Richmond Avenue
Houston, Texas 77027-5838

OR2000-3184

Dear Mr. Vasquez:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 140019.

The Houston Independent School District (the "district") received a request for a complete copy of any and all job applications, references, recommendations, letters of support and background investigation records regarding a specified individual's application for employment with the district including any documentation relied upon in determining that the individual was not qualified for employment with the district. You state that the district is releasing all but two pages of the requested information. You claim that 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 information.

You contend that criminal history record information ("CHRI") obtained from the Department of Public Safety is excepted from disclosure under section 552.101. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by statute. 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; *see also id.* § 411.087 (restrictions on disclosure of CHRI obtained from DPS also apply to CHRI obtained from other criminal justice agencies). We note that, pursuant to section 411.083(b)(3), DPS may grant access to CHRI to "the person who is the subject of the criminal history record information." Gov't Code § 411.083(b)(3). However, the district must withhold the CHRI under section 552.101 in conjunction with section 411.083(a) of the Government Code.

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).

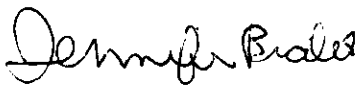
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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,



Jennifer Bialek
Assistant Attorney General
Open Records Division

JHB/er

Ref: ID# 140019

Encl. Submitted documents

cc: Mr. Karl Tiger Hanner
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(w/o enclosures)