



June 1, 2001

Mr. Dick Hall
Schwartz & Eichelbaum, P.C.
517 Soledad Street
San Antonio, Texas 78205

OR2001-2266

Dear Mr. Hall:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 147926.

The United Independent School District (the "district"), which you represent, received a request for information relating to one of its employees, including (1) the employee's application, letters of recommendation, and resume, (2) any other documents indicating whether he has any criminal background, and (3) the number of years he has been employed by the district. You claim that portions of the requested information are excepted from disclosure under sections 552.101 and 552.117 of the Government Code. We have considered the exceptions you raise and have reviewed the information you submitted.¹

We first note that the submitted documents consist of an employment application and a resume. You do not indicate whether the district is in possession of any letters of recommendation or other responsive records. You do not address the requestor's inquiry about the number of years the employee has worked for the district. Although the Public Information Act does not require a governmental body to answer factual questions, perform

¹In requesting this decision, you also listed as "[t]he particular exceptions which apply" sections 552.102, 552.103, 552.104, 552.105, 552.107, 552.108, 552.109, 552.110, 552.111, 552.113, 552.114, 552.122, 552.124, 552.126, 552.127, 552.130, 552.131, 552.026, 552.305, and 552.022. Most of these exceptions have no application to the submitted information. We suggest that you be more selective in raising the exceptions to disclosure that you believe are applicable. See Gov't Code § 552.301(b); Open Records Decision No. 665 at 1 n.1 (2000) (stating that a governmental body that requests an attorney general decision under Gov't Code § 552.301 must have a good faith belief that valid legal arguments may support a claimed exception to public disclosure).

legal research, or create new information in response to a request, the Act does require the governmental body to make a good faith effort to relate a request to information that it holds. *See* Open Records Decision Nos. 563 at 8 (1990), 561 at 8-9 (1990), 555 at 1-2 (1990), 534 at 2-3 (1989). We assume that the district has made the required good faith effort to relate this request for information to records that are within the district's possession or control.

You claim that the responsive employment application contains confidential criminal history 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." This exception encompasses information that is confidential under another statute. We understand you to contend that the information at issue is confidential under chapter 411 of the Government Code. Criminal history record information ("CHRI") obtained from the National Crime Information Center ("NCIC") or the Texas Crime Information Center ("TCIC") is confidential under federal and state law. Federal law governs the dissemination of CHRI obtained from the NCIC network. Federal regulations prohibit the release to the general public of CHRI that is maintained in state and local CHRI systems. *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.") and (c)(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."); *see also* Open Records Decision No. 565 at 10-12 (1990). The federal regulations allow each state to follow its own individual law with respect to CHRI that it generates. *See* ORD 565 at 10-12. Sections 411.083(b)(1) and 411.089(a) of the Government Code authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *See* Gov't Code § 411.089(b). Thus, CHRI generated by the federal government or another state may be disclosed only in accordance with the federal regulations, and CHRI obtained from the Texas Department of Public Safety or any other criminal justice agency must be withheld as provided by subchapter F of chapter 411 of the Government Code.

We conclude that the information in question does not constitute criminal history information that must be withheld from disclosure under the federal regulations and subchapter F of chapter 411 of the Government Code. Furthermore, your obliteration of this information has made it impossible for this office to determine whether any other exception to disclosure is applicable to this information.²

²You inform us that you redacted the information that you claim is confidential. Section 552.301 of the Government Code requires the governmental body to submit the requested information to this office in a manner that permits us to decide whether the information is excepted from disclosure. By totally obliterating what you claim is criminal history information, you made it impossible for this office to review that portion of the document. You thus failed to request a decision in the manner prescribed by section 552.301. In the future, failure to comply completely with section 552.301 will result in a decision that the requested information is public and must be released in its entirety. *See* Gov't Code §§ 552.006, .301(e), .302.

Section 552.101 of the Government Code also encompasses the common law right to privacy. Information must be withheld from disclosure under section 552.101 in conjunction with common law privacy when (1) the information is highly intimate and embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) it is of no legitimate public interest. *See Industrial Found. v. Texas Ind. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). You assert that the submitted documents contain certain information that is “highly intimate and embarrassing” and “of no legitimate concern to the public.”

Because the information at issue pertains to a public employee, we must consider whether it is private under section 552.102 of the Government Code. Section 552.102(a) excepts from disclosure “information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.” A public employee’s right to privacy under section 552.102 of the Government Code is considerably narrower than common law privacy under section 552.101, because of the greater legitimate public interest in matters involving public employees. *See Hubert v. Harte-Hanks Tex. Newspapers, Inc.*, 652 S.W.2d 546, 549-51 (Tex. App.--Austin 1983, writ ref’d n.r.e.); Open Records Decision Nos. 473 at 3 (1987), 444 at 3-4 (1986), 423 at 2 (1984). Generally, section 552.102(a) excepts information about a public employee from disclosure only when the information reveals “intimate details of a highly personal nature.” *See* Open Records Decision No. 423 at 2 (1984). Having considered your arguments and reviewed the information at issue, we conclude that the information is not protected by common law privacy under section 552.102. *See also* Open Records Decision Nos. 542 at 5 (1990) (concluding that nothing in employee’s resume was protected by common law privacy), 470 at 4 (1987) (reiterating that public has legitimate interest in job qualifications and performance of public employees), 215 at 2 (1978) (stating that attorney general must determine on case-by-case basis whether information about addiction, mental illness, or criminal history in licensing files should be disclosed).

You also claim that the submitted documents contain personal information that is excepted from disclosure under section 552.117 of the Government Code. Section 552.117(1) protects the home address, home telephone number, and social security number of a current or former government employee, as well as information that reveals whether the employee has family members, *if the current or former employee requested that this information be kept confidential under section 552.024*. *See* Open Records Decision Nos. 622 (1994), 455 (1987). You inform us that “the employee has not filed a written objection pursuant to [section] 552.024.” Therefore, the district may not withhold the employee’s home address, home telephone number, social security number, or family member information under section 552.117. Whether a particular piece of information is public must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989).

We note, however, that a social security number may be confidential under section 552.101 in conjunction with 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), *if the social security number was obtained or is maintained by a governmental body pursuant to any provision of law enacted on or after October 1, 1990.* See Open Records Decision No. 622 at 2-4 (1994). It is not apparent to this office that the social security number at issue is confidential under section 405(c)(2)(C)(viii)(I) of the federal law. You have cited no law, nor are we aware of any law enacted on or after October 1, 1990, that authorizes the district to obtain or maintain a social security number. Therefore, we have no basis for concluding that the social security number in question was obtained or is maintained pursuant to such a statute and is therefore confidential under the federal law. We caution you, however, that chapter 552 of the Government Code imposes criminal penalties for the release of confidential information. See Gov't Code §§ 552.007, .352. Therefore, prior to releasing the employee's social security number, the district should ensure that it was not obtained and is not maintained pursuant to any provision of law enacted on or after October 1, 1990.

In summary, the district may be required to withhold the employee's social security number from the requestor under section 552.101 of the Government Code in conjunction with federal law. The rest of the submitted information is not excepted from disclosure and must be released.

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

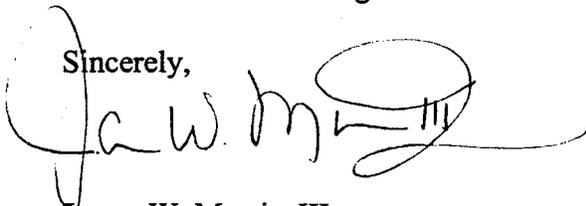
fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

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).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

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,

A handwritten signature in black ink, appearing to read "J.W. Morris III", with a large, stylized flourish extending to the right.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/sdk

Ref: ID# 147926

Encl.: Submitted documents

cc: Mr. Carlos M. Garcia
KGNS-TV
120 West Del Mar Blvd.
Laredo, Texas 78040
(w/o enclosures)