



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

February 5, 2003

Mr. Juan J. Cruz
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5219 McPherson, Ste 306
Laredo Tx 78041

OR2003-0756

Dear Mr. Cruz:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 176142.

The Clint Independent School District (the "district"), which you represent, received a request for information regarding a named former district employee. You state that the district has released most of the responsive information to the requestor. You claim, however, that the remaining information is excepted from disclosure under sections 552.101, 552.114, 552.117, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This exception encompasses information that other statutes make confidential. Section 261.201(a) of the Family Code provides as follows:

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

- (1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and
- (2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

A portion of Exhibit D consists of an investigation completed by the Texas Department of Protective and Regulatory Services ("DPRS"). The documents indicate that DPRS provided the investigation documents to the district under section 261.406 of the Family Code. *See* Fam. Code § 261.406(a)-(b). Upon review, we determine that the submitted DPRS documents represent files, reports, records, communications, and working papers used or developed in an investigation under chapter 261 of the Family Code or in providing services as a result of an investigation. The requestor does not fall within any category of persons or entities that are authorized to receive this confidential information under section 261.201. *See* Fam. Code §§ 261.201(b)-(g) (enumerating entities authorized to receive section 261.201 information). Accordingly, we determine that the submitted DPRS investigation is confidential in its entirety under section 261.201 of the Family Code and must be withheld from the requestor under section 552.101 of the Government Code. *See* Open Records Decision No. 440 at 2 (1986) (construing predecessor statute).

Section 552.101 also encompasses the doctrine of common law-privacy. Common-law privacy protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Where an individual's criminal history 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 v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989). Accordingly, the district must withhold any criminal history information compiled by the district under section 552.101 of the Government Code in conjunction with common-law privacy.

We next address the information in Exhibit B. You appear to argue that the information in Exhibit B is protected under common-law privacy. Upon review, however, we determine that the information in Exhibit B is not highly intimate or embarrassing. Furthermore, the information is subject to a legitimate public interest. *See* Open Records Decision Nos. 444 at 5-6 (1986) (public has interest in public employee's qualifications and performance), 405 at 2-3 (1983) (public has interest in manner in which public employee performs his job); *see also* Open Records Decision No. 423 at 2 (1984) (scope of public employee privacy is narrow). Accordingly, Exhibit B may not be withheld under section 552.101 in conjunction with common-law privacy.

We note that the submitted records contain information that may be excepted from disclosure under section 552.117 of the Government Code. Section 552.117 excepts from disclosure the home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who timely elect to keep this information confidential pursuant to section 552.024. Whether information is protected by section 552.117 must be determined at the time the request for information is made. *See* Open Records Decision No. 530 at 5 (1989). Therefore, the district may only withhold information under section 552.117 on behalf of current or former officials or

employees who made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. Consequently, if the former employee at issue timely elected to keep his social security number, home address and telephone number, and family member information confidential, the district must withhold this information from the remaining documents under section 552.117 of the Government Code. If the former employee did not timely elect to keep this information confidential, the district may not withhold the information under section 552.117 of the Government Code. We have marked information that may be confidential under section 552.117 of the Government Code.

We note, however, that if the former employee did not timely elect to keep his social security number confidential pursuant to section 552.024, the social security number may be confidential under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). *See* Open Records Decision No. 622 (1994). These amendments make confidential social security numbers and related records that are obtained or maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See id.* We have no basis for concluding that the social security number in the submitted documents is confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure under section 552.101 on the basis of that federal provision. We caution, however, that section 552.352 of the Public Information Act imposes criminal penalties for the release of confidential information. Prior to releasing the former employee's social security number, the district should ensure that the social security number was not obtained and is not maintained by the school district pursuant to any provision of law, enacted on or after October 1, 1990.

Exhibit E contains the employee's I-9 form. Section 1324a of title 8 of the United States Code provides that an Employment Eligibility Verification Form I-9 "may not be used for purposes other than for enforcement of this chapter" and for enforcement of other federal statutes governing crime and criminal investigations. *See* 8 U.S.C. § 1324a(b)(5); *see also* 8 C.F.R. § 274a.2(b)(4). The release of the submitted I-9 form in response to this request for information would be "for purposes other than for enforcement" of the referenced federal statutes. Accordingly, the submitted I-9 form is excepted from disclosure under section 552.101 of the Government Code in conjunction with federal law and may be released only for purposes of compliance with the federal laws and regulations governing the employment verification system.

Finally, the submitted personnel records also contain Texas driver's license information. Section 552.130 of the Government Code provides in relevant part:

- (a) Information is excepted from the requirement of Section 552.021 if the information relates to:

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]
- (2) a motor vehicle title or registration issued by an agency of this state[.]

We have marked driver's license information that the district must withhold pursuant to section 552.130 of the Government Code.

In summary, the submitted DPRS investigation must be withheld in its entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. Any criminal history record information must be withheld under section 552.101 in conjunction with common-law privacy. If the former employee at issue timely elected to keep his home address and telephone number, social security number, and family member information confidential pursuant to section 552.024 of the Government Code, then the district must withhold the information we have marked pursuant to section 552.117 of the Government Code. The former employee's social security number may be confidential under section 552.101 in conjunction with federal law. Driver's license information must be withheld under section 552.130 of the Government Code. The former employee's I-9 form must be withheld under section 552.101 and federal law. The remainder of the submitted information must be released to the requestor.

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 Texas Building and Procurement 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,



David R. Saldivar
Assistant Attorney General
Open Records Division

DRS/seg

Ref: ID# 176142

Enc: Submitted documents

c: Ms. Marjorie Wilcox Jobe
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(w/o enclosures)