



OFFICE of the ATTORNEY GENERAL
GREG ABBOTT

March 4, 2003

Mr. Timothy Karczewski
Schwartz & Eichelbaum, P.C.
P.O. Box 3685
San Angelo, Texas 76902

OR2003-1380

Dear Mr. Karczewski:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 177299.

The Wills Point Independent School District (the "district"), which you represent, received a request for information relating to an investigation of alleged cheating on the TAAS test. You indicate that you have released most of the requested information but claim that social security numbers contained in the submitted information are excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note that certain information has been redacted from the submitted document. You do not assert, nor has our review of our records indicated, that you have been granted a previous determination to withhold any such information without seeking a ruling from this office. Because we can discern the specific category of information that has been redacted, being deprived of this information does not inhibit our ability to make a ruling *in this instance*. Nevertheless, be advised that a failure to provide this office with requested information generally deprives us of the ability to determine whether information may be withheld and leaves this office with no alternative other than ordering that the redacted information be released. See Gov't Code § 552.301(e)(1)(D) (governmental body must provide this office with copy of "specific information requested").

We next note that some of the information contained in the submitted document, including the social security numbers, may be subject to section 552.117. Section 552.117(1) of the Government Code excepts from public disclosure the present and former home addresses and

telephone numbers, social security numbers, and family member information of current or former officials or employees of governmental body who request that this information be kept confidential under section 552.024. Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it is made. See Open Records Decision No. 530 at 5 (1989). Therefore, under section 552.117 you must withhold the social security number, home phone number, and address of any person on the submitted list who is a current or former district official or employee and who, prior to the receipt of this request, elected to keep such information confidential.

We turn now to your arguments. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information made confidential by statutes such as the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), which make confidential social security numbers and related records obtained and 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 Open Records Decision No. 622 (1994).

You cite two provisions of law to support your assertion that these social security numbers were obtained or are maintained pursuant to a provision of law enacted on or after October 1, 1990. You first cite to a rule of the State Board of Educator Certification (the "board") as a basis for withholding the social security numbers. Section 249.14 of title 19 of the Texas Administrative Code requires a school superintendent to report certain situations involving educators to the *board* by filing a report that must contain the educator's social security number. 19 T.A.C. § 249.14(d), (e). You state, however, that the document at issue was created for and forwarded to an investigator at the Texas Education Agency. We therefore conclude that the district has not explained that it obtained or maintains the social security numbers in order to file a report with the *board*. Thus, we are unable to conclude that the district obtained or is maintaining the social security numbers pursuant to section 249.14. Accordingly, the social security numbers are not confidential under federal law on the basis of section 249.14.

You also assert that two of the social security numbers are maintained by the district pursuant to provisions of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 42 U.S.C. § 653a(a)(2)(B), (b)(1)(A). Under this federal law, an employer is required to furnish to the Directory of New Hires of the State in which a newly hired employee works, a report that includes the employee's social security number. 42 U.S.C. § 653a(b)(1)(A). You explain that as of October 1, 1998, the district is required by law to obtain and maintain the newly hired employees' social security numbers. Thus, we agree that the district obtained and is maintaining some of its employees' social security numbers pursuant to a law that was enacted after October 1, 1990. Therefore, under section 552.101, the district must withhold from disclosure the social security numbers of its employees who were hired since October 1, 1998.

As for the social security numbers of employees hired prior to October 1, 1998, the district did not obtain and is not maintaining these social security numbers pursuant to section 653a of title 42. Thus, they are not made confidential under the Social Security Act on the basis of section 653a. You have provided us with no other basis for concluding that these social security numbers are 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 any social security number information, you should ensure that it was not obtained or is not maintained by the district pursuant to any provision of law enacted on or after October 1, 1990.

In summary, pursuant to section 552.117, the district must withhold the social security number, home phone number, and address of any person who made a timely election to keep such information confidential. Social security numbers of district employees who were hired since October 1, 1998 are confidential under federal law and must be withheld under section 552.101. Social security numbers of employees hired prior to that date must be released unless they are excepted under section 552.117 or were obtained or maintained pursuant to another law enacted on or after October 1, 1990. All other submitted information 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

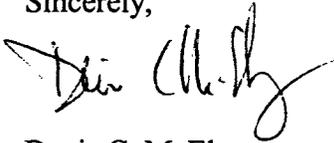
that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

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 Dep't of Pub. 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,



Denis C. McElroy
Assistant Attorney General
Open Records Division

DCM/lmt

Ref: ID# 177299

Enc. Submitted documents

c: Ms. K. Marchio
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(w/o enclosures)