



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

July 1, 2003

Mr. Dennis J. Eichelbaum
General Counsel
Schwartz & Eichelbaum, P.C.
7400 Gaylord Parkway, Suite 200
Frisco, Texas 75034

OR2003-4508

Dear Mr. Eichelbaum:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 183633.

The Cleveland Independent School District (the "district"), which you represent, received a request for a "copy of the information [the district] obtained concerning [the requestor's] criminal history check." You assert that the requested information is confidential by law. We understand you to ask whether the district may release the requested information under the present circumstances or whether it must withhold such information pursuant to section 552.101 of the Government Code. We have considered your arguments and reviewed the submitted information.

Section 552.101 of the Government Code excepts from required public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This exception encompasses information that other statutes make confidential. Criminal history record information ("CHRI") maintained by the Texas Department of Public Safety ("DPS") is deemed confidential under section 411.083 of the Government Code; however, DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See* Gov't Code § 411.083. Section 411.084 governs use of CHRI obtained from DPS and provides:

Criminal history record information obtained from the department under this subchapter:

(1) is for the exclusive use of the authorized recipient of the information; and

(2) *may be disclosed* or used by the recipient only if, and only *to the extent that, disclosure* or use *is authorized* or directed by:

- (A) *this subchapter*;
- (B) another statute;
- (C) a rule adopted under a statute; or
- (D) an order of a court of competent jurisdiction

Gov't Code § 411.084 (emphasis added).

Section 411.097, which is part of subchapter F of chapter 411 of the Government Code, authorizes a school district to obtain from DPS CHRI that the district is required or authorized to obtain under subchapter C of chapter 22 of the Education Code. *See* Gov't Code § 411.097; Educ. Code § 22.083. Subsection 411.097(d) governs rerelease of CHRI by a school district and provides:

(d) Criminal history record information obtained by a school district, charter school, private school, service center, commercial transportation company, or shared services arrangement under Subsection (a), (b), or (c) *may not be released or disclosed 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, if the information is obtained under Subsection (a)(2).

In this instance, the requestor is the subject of the requested CHRI. As such, pursuant to subsection 411.097(d), he is authorized to obtain from the district the CHRI that the district received from DPS. Under these circumstances, we conclude that the requested information must be released to this requestor.¹

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

¹Although you assert that release of the requested information to this requestor is prohibited by section 411.085 of the Government Code, that provision merely provides the penalties for the "*Unauthorized Obtaining, Use, or Disclosure of Criminal History Record Information.*" Gov't Code § 411.085 (emphasis added). Because release in this instance is specifically authorized by section 411.097, section 411.085 is inapplicable.

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).

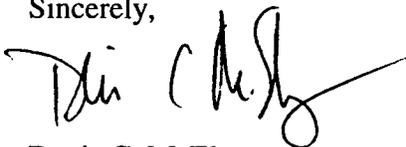
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following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

Ref: ID# 183633

Enc. Submitted documents

c: Mr. Don R. Ledesma
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(w/o enclosures)