



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 14, 2005

Mr. Marc A. Barenblat
Staff Attorney
State Board of Educator Certification
1701 North Congress Avenue, 5th Floor
Austin, Texas 78701

OR2005-08366

Dear Mr. Barenblat:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 232215.

The State Board for Educator Certification (the "board") received a request for information pertaining to any investigation or disciplinary action pertaining to a named individual. You state that some of the requested information has been provided to the requestor but claim that portions of the submitted information are excepted from disclosure under sections 552.101, 552.117, 552.130, and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.¹

Initially, you note that the submitted information includes the social security number of the named individual. Section 552.101 excepts from required public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 encompasses section 59.001 of the Occupations Code. Section 59.001 of the Occupations Code provides as follows:

¹We assume that the sample of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

The social security number of an applicant for or holder of a license, certificate of registration, or other legal authorization issued by a licensing agency to practice in a specific occupation or profession that is provided to the licensing agency is confidential and not subject to disclosure under Chapter 552, Government Code.

Occ. Code § 59.001.² You indicate that the board obtained the individual's social security number in connection with the issuance of a professional license. Accordingly, we find that the individual's social security number you have marked is confidential under section 59.001 of the Occupations Code and thus must be withheld from disclosure under section 552.101 of the Government Code.

The submitted information contains fingerprint information. Chapter 560 of the Government Code provides that a governmental body may not release fingerprint information except in certain limited circumstances. *See* Gov't Code §§ 560.001 (defining "biometric identifier" to include fingerprints), .002 (prescribing manner in which biometric identifiers must be maintained and circumstances in which they can be released), .003 (providing that biometric identifiers in possession of governmental body are exempt from disclosure under Act). You do not inform us and the submitted information does not indicate that section 560.002 permits the disclosure of the submitted fingerprint information. Therefore, the board must withhold the information you have marked under section 552.101 in conjunction with section 560.003 of the Government Code.

We next address your claim that a portion of the requested information is confidential under section 21.355 of the Education Code. This section provides that "[a] document evaluating the performance of a teacher or administrator is confidential." In Open Records Decision No. 643 (1996), this office interpreted this section to apply to any document that evaluates, as that term is commonly understood, the performance of a teacher or administrator. In that opinion, this office also concluded that a teacher is someone who is required to hold and does hold a certificate or permit required under chapter 21 of the Education Code and is teaching at the time of his or her evaluation. *Id.* Based on the reasoning set out in Open Records Decision No. 643, we conclude that the submitted information you have marked is made confidential under section 21.355 of the Education Code and must therefore be withheld pursuant to section 552.101 of the Government Code.

You claim that the marked telephone number and address in the submitted information is confidential under chapter 772 of the Health and Safety Code. Chapter 772 of the Health and Safety Code makes the originating telephone numbers and addresses of certain 9-1-1 calls confidential. This chapter authorizes the development of local emergency communications districts. Sections 772.118, 772.218, and 772.318 of the Health and Safety Code apply only

²This section was renumbered from Occ. Code § 58.001 by the Act of May 25, 2005, 79th Leg., R.S., H.B. 2018, § 23.001(68).

to an emergency 9-1-1 district established in accordance with chapter 772. See Open Records Decision No. 649 (1996). These statutes make confidential the originating telephone numbers and addresses of 9-1-1 callers that are furnished by a service supplier. *Id.* at 2. Section 772.118 applies to an emergency communication district for a county with a population of more than two million. Section 772.218 applies to an emergency communication district for a county with a population of more than 860,000. Section 772.318 applies to an emergency communication district for a county with a population of more than 20,000. You contend that the originating address and telephone number of the 9-1-1 caller in the submitted information are confidential under chapter 772. To the extent the address and telephone number contained in the submitted records that you have marked are an originating address and telephone number of a 9-1-1 caller and were supplied by a 9-1-1 service supplier to an emergency communication district that is subject to section 772.118, 772.218, or 772.318 of the Health and Safety Code, the telephone number and address must be withheld from disclosure under section 552.101 as information deemed confidential by statute. However, if this telephone number and address does not reflect the origin of 9-1-1 calls or was not provided by a 9-1-1 service supplier to an emergency communication district subject to section 772.118, 772.218, or 772.318, the telephone number and address must be released.

Section 552.101 also encompasses laws that make criminal history record information (“CHRI”) confidential. 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 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). However, the definition of CHRI does not include driving record information maintained by the DPS under chapter 521 of the Transportation Code. See Gov’t Code § 411.082(2)(B). The CHRI that you have marked must be withheld.

Next, we address the board’s privacy arguments for the marked portions of the submitted information. For information to be protected from public disclosure by the common-law right of privacy under section 552.101, the information must meet the criteria set out in *Industrial Foundation*. See *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 683-85 (Tex. 1976). In *Industrial Foundation*, the Texas Supreme Court stated that information is excepted from disclosure if (1) the information contains highly intimate or embarrassing facts, the release of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Id.* at 685. The type of information considered intimate and embarrassing by the Texas Supreme Court in

Industrial Foundation included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. In addition, this office has found that the following types of information are excepted from required public disclosure under common-law privacy: an individual's criminal history when compiled by a governmental body, *see* Open Records Decision No. 565 (citing *United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989)); some kinds of medical information or information indicating disabilities or specific illnesses; and identities of victims of sexual abuse. Upon review, we find that the information we have marked must be withheld under section 552.101 and common-law privacy. However, the public has a legitimate interest in the remaining information and therefore it may not be withheld under section 552.101 and common-law privacy. *See* Open Records Decision Nos. 444 at 5-6 (1986) (public has interest in public employee's qualifications and performance and the circumstances of resignation or termination), 423 at 2 (1984) (scope of public employee privacy is narrow), 405 at 2-3 (1983) (public has interest in manner in which public employee performs job), 329 at 2 (1982) (information relating to complaints against public employees and discipline resulting therefrom is not protected under former section 552.101 or 552.102), 208 at 2 (1978) (information relating to complaint against public employee and disposition of the complaint is not protected under either the constitutional or common-law right of privacy).

We now turn to your section 552.117 claim against disclosure. Section 552.117(a)(1) excepts from disclosure the home address, home telephone number, social security number, and family member information of an employee of a governmental body, provided the employee elected to keep such information confidential pursuant to section 552.024 of the Government Code prior to the date the governmental body received a request for the information. This office has applied the interagency transfer doctrine to conclude that information made confidential under section 552.117(a)(1) of the Government Code remains confidential upon transfer to another governmental body. *See* Open Records Decision No. No. 674 at 4-5 (2001). The transfer of confidential section 552.117 information did not destroy the confidentiality of that information. *See* Open Records Decision No. 674 at 4-5 (2001); *see also* Open Records Decision No. 516 (1989) (Department of Public Safety did not violate confidentiality under predecessor of section 552.117(2) by transferring police officer's home address to Attorney General's Child Support Enforcement Office). If the school district employee filed an election with the school district under section 552.024 to keep confidential her home address and home telephone number, this information in the custody of the school district was confidential under section 552.117(a)(1). Pursuant to the intergovernmental transfer doctrine, the information remains confidential upon the record's transfer to the board. Thus, in order to ascertain whether the information is confidential and cannot lawfully be released to the public, the board must inquire with the school district as to whether the individual elected under section 552.024 to keep confidential her home

address and home telephone number. If so, the individual's marked personal information is excepted from disclosure under section 552.117(a)(1).

You also note that the remaining submitted information includes Texas-issued motor vehicle record information. Section 552.130 of the Government Code excepts from disclosure information that "relates to . . . a motor vehicle operator's or driver's license or permit issued by an agency of this state [or] a motor vehicle title or registration issued by an agency of this state." Gov't Code § 552.130. You must withhold the marked information pursuant to section 552.130.

Finally, we address the e-mail address of a member of the public in the submitted documents. Section 552.137 of the Government Code excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body" unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See* Gov't Code § 552.137(a)-(c). Section 552.137 does not apply to a government employee's work e-mail address because such an address is not that of the employee as a "member of the public" but is instead the address of the individual as a government employee. The e-mail address at issue in the remaining submitted information does not appear to be of a type specifically excluded by section 552.137(c). Therefore, in accordance with section 552.137, the board must withhold the e-mail address you have marked unless the board receives consent to release it.

In summary, the marked social security number must be withheld under section 552.101 of the Government Code in conjunction with section 59.001 of the Occupations Code. The board must withhold the information you have marked under section 552.101 in conjunction with section 560.003 of the Government Code. That portion of the submitted information you have marked is made confidential under section 21.355 of the Education Code and must be withheld pursuant to section 552.101 of the Government Code. To the extent the address and telephone number contained in the submitted records that you have marked are an originating address and telephone number of a 9-1-1 caller and were supplied by a 9-1-1 service supplier to an emergency communication district that is subject to section 772.118, 772.218, or 772.318 of the Health and Safety Code, the telephone number and address must be withheld from disclosure under section 552.101 as information deemed confidential by statute. The CHRI that you have marked is confidential pursuant to section 411.083 of the Government Code and must be withheld under section 552.101. We have marked the information that the board must withhold pursuant to section 552.101 in conjunction with the common-law right to privacy. The marked personal information must be withheld under section 552.117 of the Government Code if the individual elected under 552.024 to keep this personal information confidential. The board must withhold the marked information under section 552.130 of the Government Code. Finally, the e-mail address you have marked must

be withheld under section 552.137 of the Government Code. The remaining 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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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).

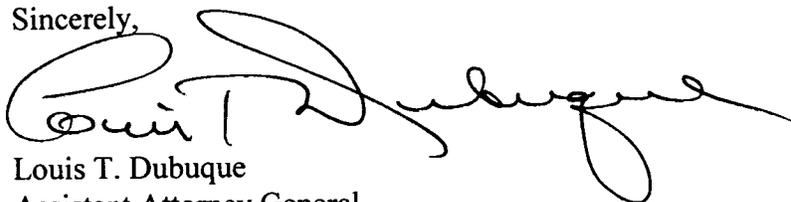
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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 Office of the Attorney General 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,

A handwritten signature in black ink, appearing to read "Louis T. Dubuque". The signature is fluid and cursive, with a large loop at the end.

Louis T. Dubuque
Assistant Attorney General
Open Records Division

LTD/jh

Ref: ID# 232215

Enc. Submitted documents

c: Ms. Lisette Flores
Investigations Supervisor
Arizona State Board of Education
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(w/o enclosures)