



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 28, 2005

Ms. Ann Manning
McWhorter, Cobb and Johnson, L.L.P.
P.O. Box 2547
Lubbock, Texas 79408

OR2005-11627

Dear Ms. Manning:

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# 238880.

The Lubbock Independent School District (the "district"), which you represent, received a request for nine categories of information related to individuals volunteering for the district and the background checks performed on those individuals. You state that you have released some of the requested information. You claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted 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." Gov't Code § 552.101. This section encompasses laws that make criminal history record information ("CHRI") generated by the National Crime Information Center ("NCIC") or by the Texas Crime Information Center ("TCIC") confidential. Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* Section 411.083 of the Government Code deems confidential CHRI that the Texas Department of Public Safety ("DPS") maintains, except that the DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See* Gov't Code § 411.083.

Sections 411.083(b)(1) and 411.089(a) 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. *Id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090 - .127. Furthermore, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F. In this instance, however, we find that no portion of the submitted information contains CHRI generated by the TCIC or NCIC network. Therefore, none of the submitted information may be withheld under section 552.101 in conjunction with chapter 411 or federal law.

We note, however, that portions of the submitted information are subject to the Family Educational Rights and Privacy Act of 1974 (“FERPA”), which is also encompassed by section 552.101 of the Government Code. FERPA provides that no federal funds will be made available under any applicable program to an educational agency or institution that releases personally identifiable information, other than directory information, contained in a student’s education records to anyone but certain enumerated federal, state, and local officials and institutions, unless otherwise authorized by the student. *See* 20 U.S.C. § 1232g(b)(1), (d) (for student eighteen years of age or attending institution of postsecondary education, permission or consent required of and rights accorded to parent under FERPA are required of and accorded to student); *see also* 34 C.F.R. § 99.3 (defining personally identifiable information). “Education records” means those records that contain information directly related to a student and that are maintained by an educational agency or institution, or by a person acting for such agency or institution. *See* 20 U.S.C. § 1232g(a)(4)(A). Information must be withheld from required public disclosure under FERPA only to the extent reasonable and necessary to avoid personally identifying a particular student. *See* Open Records Decision Nos. 332 (1982), 206 (1978). We have marked a representative sample of the student-identifying information the district must withhold under section 552.101 in conjunction with FERPA.

We further note that the submitted information includes Texas driver’s license numbers. Section 552.130 of the Government Code excepts from public disclosure information that relates to “a motor vehicle operator’s or driver’s license or permit issued by an agency of this state[.]” Gov’t Code § 552.130(a)(1). Therefore, the district must withhold the Texas driver’s license numbers we have marked under section 552.130.

The submitted information also includes e-mail addresses that are excepted from disclosure under section 552.137 of the Government Code. This section 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). The e-mail addresses at issue do not appear to be of a type

specifically excluded by section 552.137(c). You do not inform us that the relevant members of the public have affirmatively consented to the release of these e-mail addresses. Therefore, the district must withhold the e-mail addresses we have marked under section 552.137.

Lastly, we note that the submitted information also includes social security numbers. Section 552.147 of the Government Code provides that “[t]he social security number of a living person is excepted from” required public disclosure under the Act. Therefore, the district must withhold the social security numbers contained in the submitted information under section 552.147.¹

In summary, the district must withhold the following: (1) student-identifying information, a representative sample of which we have marked, under section 552.101 of the Government Code in conjunction with FERPA; (2) the Texas driver’s license numbers we have marked under section 552.130 of the Government Code; (3) the e-mail addresses we have marked under section 552.137 of the Government Code; and (4) the submitted social security numbers under section 552.147 of the Government Code. The remaining 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, 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

¹We note that section 552.147(b) of the Government Code authorizes a governmental body to redact a living person’s social security number from public release without the necessity of requesting a decision from this office under the Act.

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 403, 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. 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,



Caroline E. Cho
Assistant Attorney General
Open Records Division

CEC/sdk

Ref: ID# 238880

Enc. Submitted documents

c: Mr. Mel Tittle
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