

The ruling you have requested has been modified pursuant to a court order. The court judgment has been attached to this document.



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 24, 2007

Mr. W. Montgomery Meitler
Assistant Counsel
Office of Legal Services
Texas Education Agency
1701 North Congress Avenue
Austin, Texas 78701-1494

OR2007-09358

Dear Mr. Meitler:

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# 284616.

The Texas Education Agency (the "agency") received a request for several categories of information pertaining to certain faculty employed by Bastrop Independent School District. You state that a portion of the responsive information will be released to the requestor. You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.102 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.¹

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception encompasses information that is made confidential by statute. Criminal history record information ("CHRI") generated by the National Crime Information Center ("NCIC") or by the Texas Crime Information Center ("TCIC") is confidential. The federal regulations allow each state to follow its individual law with respect to CHRI it generates. Open Records Decision No. 656 (1990). Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety ("DPS") maintains, except that the DPS may disseminate this information as provided in subchapter F of chapter 411 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;

¹We note that you have redacted social security numbers in the submitted information pursuant to section 552.147 of the Government Code. *See* Gov't Code 552.147(b) (authorizing governmental body to redact living person's social security number without the necessity of requesting decision from attorney general under the Act).

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 subchapter F of chapter 411 of the Government Code. We have marked the information that must be withheld under section 552.101 of the Government Code in conjunction with subchapter F of chapter 411 of the Government Code.

Section 552.102(b) excepts from disclosure “a transcript from an institution of higher education maintained in the personnel file of a professional public school employee.” Gov’t Code § 552.102(b). However, section 552.102 is applicable only to information contained in the personnel file of an employee of a governmental body. *See Hubert v. Harte-Hanks Tex. Newspapers, Inc.*, 652 S.W.2d 546, 549-51 (Tex. App.—Austin 1983, writ ref’d n.r.e.); *see also* Open Records Decision Nos. 473 at 3 (1987), 444 at 3-4 (1986), 423 at 2 (1984). We note that the submitted transcripts are not maintained in a personnel file. Therefore, none of this information may be withheld under section 552.102 of the Government Code.

Finally, we note that some of the remaining information is protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Attorney General Opinion JM-672 (1987). A governmental body must allow inspection of materials that are subject to copyright protection unless an exception applies to the information. *Id.* If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit. *See* Open Records Decision No. 550 (1990).

In summary, the CHRI we have marked must be withheld under section 552.101 of the Government Code in conjunction with subchapter F of chapter 411 of the Government Code. The remaining submitted information must be released to the requestor; however, in releasing information that is protected by copyright, the agency must comply with applicable copyright law.

You also ask this office to issue a previous determination permitting the agency to withhold CHRI under section 552.101 of the Government Code in conjunction with federal law and subchapter F of chapter 411 of the Government Code without the necessity of requesting a decision from this office. We decline to issue such a previous determination at this time. Accordingly, 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. 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,



M. Alan Akin
Assistant Attorney General
Open Records Division

MAA/jb

Ref: ID# 284616

Enc. Submitted documents

c: Mr. Turner Ford Gassaway
Attorney and Counselor at Law
One Congress Plaza
111 Congress Avenue
Austin, Texas 78702
(w/o enclosures)

SEP 02 2008

At 1:50 P.M.
Amalia Rodriguez-Mendoza, Clerk

CAUSE NO. D-1-GN-07-002656

TEXAS EDUCATION AGENCY,
Plaintiff,

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IN THE DISTRICT COURT OF

V.

TRAVIS COUNTY, TEXAS

GREG ABBOTT, ATTORNEY GENERAL
FOR THE STATE OF TEXAS,
Defendant.

250TH JUDICIAL DISTRICT

AGREED FINAL JUDGMENT

On this date, the Court heard the parties' motion for agreed final judgment. Plaintiff Texas Education Agency (TEA), and Defendant Greg Abbott, Attorney General of Texas, appeared, by and through their respective attorneys, and announced to the Court that all matters of fact and things in controversy between them had been fully and finally compromised and settled. This cause is an action under the Public Information Act (PIA), Tex. Gov't Code Ann. ch. 552 (West 2004 & Supp. 2006). The parties represent to the Court that, in compliance with Tex. Gov't Code § 552.325(c), the requestor, Turner Ford Gassaway, was sent reasonable notice of this setting and of the parties' agreement that TEA must withhold some of the information at issue; that the requestor was also informed of his right to intervene in the suit to contest the withholding of this information; and that the requestor has not informed the parties of his intention to intervene. Neither has the requestor filed a motion to intervene or appeared today. After considering the agreement of the parties and the law, the Court is of the opinion that entry of an agreed final judgment is appropriate, disposing of all claims between these parties.

IT IS THEREFORE ADJUDGED, ORDERED AND DECLARED that:

1. The transcripts, which are maintained in the personnel file for eight persons employed by Bastrop Independent School District (BISD), who are teaching by virtue of a local or district

teaching permit pursuant to Tex. Educ. Code § 21.055, are excepted from disclosure by Tex. Gov't Code § 552.102(b);

2. Tex. Gov't Code § 552.102(b) does not apply to the degree obtained or the curriculum on the transcripts;

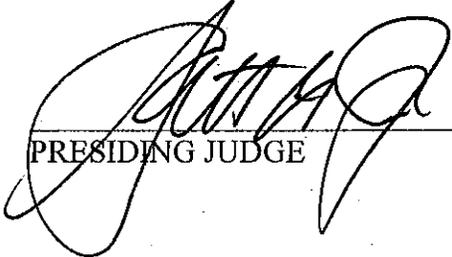
3. TEA shall withhold from the requestor the information described in ¶ 1 of this Agreement. However, TEA shall disclose the degree obtained and curriculum in the transcripts;

4. All costs of court are taxed against the parties incurring the same;

5. All relief not expressly granted is denied; and

6. This Agreed Final Judgment finally disposes of all claims between Plaintiff and Defendant and is a final judgment.

SIGNED this the 2 day of September, 2008.


PRESIDING JUDGE

APPROVED:



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