



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 26, 2007

Ms. Amanda M. Bigbee
Henslee Schwarz, L.L.P.
306 West 7th Street, Suite 1045
Fort Worth, Texas 76102

OR2007-15393

Dear Ms. Bigbee:

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# 295825.

Mount Vernon Independent School District (the "district"), which you represent, received a request for information pertaining to the recruitment of the district's School Resource Officer, including employment advertisements, submitted applications, selection process, background checks, and employment offers. The district states that it will release some of the responsive information. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.108, 552.111, 552.115, 552.117, 552.130, and 552.137 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

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."² Gov't Code § 552.101. This exception encompasses information that is made confidential by statute. Criminal history record information ("CHRI") generated by the

¹Although you raise section 552.024 of the Government Code, this provision is not an exception to public disclosure under chapter 552 of the Government Code. Rather, this section permits a current or former official or employee of a governmental body to choose whether to allow public access to certain information relating to the current or former official or employee that is held by the employing governmental body. *See* Gov't Code § 552.024.

²While you cite section 552.108 of the Government Code for your argument to withhold CHRI, we understand you to raise section 552.101 of the Government Code, as it is the proper exception for the substance of your argument.

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; 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. You state that the information in Exhibit F is CHRI that must be withheld. Based on your representation and our review of Exhibit F, 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 excepts from disclosure “information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.” Gov’t Code § 552.102 (a). In *Hubert v. Harte-Hanks Texas Newspapers*, 652 S.W.2d 546 (Tex. App.—Austin 1983, *writ ref’d n.r.e.*), the court ruled that the test to be applied to information claimed to be protected under section 552.102 is the same as the test formulated by the Texas Supreme Court in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976).

In *Industrial Foundation*, the Texas Supreme Court stated that information is excepted from disclosure if it (1) contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person and (2) is not of legitimate concern to the public. *Indus. Found.*, 540 S.W.2d at 685. The district claims that one document in Exhibit G and the documents in Exhibit I are highly intimate documents of no legitimate interest to the public. This information, however, pertains solely to the qualifications of applicants for public employment. Since there is legitimate public interest in the qualifications of public employees and the hiring practices of governmental bodies, the district may not withhold the document in Exhibit G or those in Exhibit I from public disclosure on the basis of common-law privacy. *See generally* Open Records Decision Nos. 470 (1987) (public has legitimate interest in job qualifications of public employees), 444 (1986) (public has legitimate interest in knowing reasons for dismissal, demotion, promotion, or resignation of public employees).

Next, the district argues that Exhibits B and E are excepted under section 552.111 of the Government Code. Section 552.111 excepts from disclosure “an interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the

agency.” Gov’t Code § 552.111. This exception encompasses the deliberative process privilege. *See* Open Records Decision No. 615 at 2 (1993). The purpose of section 552.111 is to protect advice, opinion, and recommendation in the decisional process and to encourage open and frank discussion in the deliberative process. *See Austin v. City of San Antonio*, 630 S.W.2d 391, 394 (Tex. App.—San Antonio 1982, no writ); Open Records Decision No. 538 at 1-2 (1990).

In Open Records Decision No. 615, this office re-examined the statutory predecessor to section 552.111 in light of the decision in *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.—Austin 1992, no writ). We determined that section 552.111 excepts from disclosure only those internal communications that consist of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body. *See* ORD 615 at 5. A governmental body’s policymaking functions do not encompass routine internal administrative or personnel matters, and disclosure of information about such matters will not inhibit free discussion of policy issues among agency personnel. *Id.*; *see also City of Garland v. Dallas Morning News*, 22 S.W.3d 351 (Tex. 2000) (section 552.111 not applicable to personnel-related communications that did not involve policymaking). A governmental body’s policymaking functions do include administrative and personnel matters of broad scope that affect the governmental body’s policy mission. *See* Open Records Decision No. 631 at 3 (1995).

You contend that the information in Exhibits B and E is excepted under section 552.111. You state that Exhibit B contains exchanges of opinions regarding personnel matters and school board meeting issues. You also state that Exhibit E consists of exchanges of opinions regarding candidates for employment and recommendations regarding personnel matters. Information pertaining to personnel matters may only be withheld under section 552.111 when it is a matter of broad scope that affects the governmental body’s policy mission. The information in Exhibits B and E pertains to district deliberations over filling a single employment position and do not concern personnel matters of broad scope that affect the district’s policy mission. Therefore, you have not demonstrated the applicability of section 552.111 to the information in Exhibits B and E.

Next, you claim section 552.115 of the Government Code excepts from disclosure the birth certificate in Exhibit H. Section 552.115 provides in part, “[a] birth or death record maintained by the bureau of vital statistics of the Texas Department of Health or a local registration official is excepted from the requirements of section 552.021[.]” Gov’t Code § 552.115(a). However, section 552.115 is applicable only to information maintained by the Vital Statistics Unit or a local registration official. *See* Open Records Decision No. 338 (1982) (finding that statutory predecessor to Gov’t Code § 552.115 excepted only those birth and death records which are maintained by the bureau of vital statistics and local registration officials.) In this case, the birth certificate in Exhibit H is held by the district; therefore, it may not be withheld under section 552.115.

You assert that some of the information in Exhibits C and D is excepted under section 552.117 of the Government Code. Section 552.117 (a)(1) excepts from disclosure the current and former home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024 of the Government Code. Gov't Code § 552.117 (a)(1). However, an individual's personal post office box number is not a "home address" for purposes of section 552.117, and therefore may not be withheld under section 552.117. *See* Open Records Decision No. 622 at 4 (1994) (purpose of Gov't Code § 552.117 is to protect public employees from being harassed at home); *see also* Open Records Decision No. 658 at 4 (1998) (statutory confidentiality provision must be express and cannot be implied). 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). You state, and provide documentation showing, that the employee at issue timely elected to withhold his personal information. Accordingly, the district must withhold the information we have marked in Exhibits C and D pursuant to section 552.117.

We note that some of the information contained in Exhibits G and I may be subject to section 552.1175 of the Government Code. Section 552.1175 provides in part the following:

(a) This section applies only to:

(1) peace officers as defined by Article 2.12, Code of Criminal Procedure;

...

(b) Information that relates to the home address, home telephone number, or social security number of an individual to whom this section applies, or that reveals whether the individual has family members is confidential and may not be disclosed to the public under this chapter if the individual to whom the information relates:

(1) chooses to restrict public access to the information; and

(2) notifies the governmental body of the individual's choice on a form provided by the governmental body, accompanied by evidence of the individual's status.

Gov't Code § 552.1175(a), (b). Exhibits G and I contain the home telephone numbers, addresses, and family member information of peace officers who are not employed by the district. If these officers elected to restrict access to this information in accordance with section 552.1175(b), the district must withhold the information we have marked. To the

extent the individuals at issue do not elect to keep this information confidential, it may not be withheld.

You assert that some of the information in Exhibits D and G is excepted under section 552.130 of the Government Code, which provides that information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by a Texas agency is excepted from public release. Gov't Code § 552.130(a)(1), (2). Upon review, we have marked the driver's license information that the district must withhold under section 552.130.

Lastly, the district asserts that some of the information it has marked in Exhibits B and G is excepted under section 552.137 of the Government Code. Section 552.137 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. Also, the requestor has a right of access to his own e-mail address. *Id.* § 552.023 (person or person's authorized representative has special right of access to information relating to person that is protected from public disclosure by laws intended to protect that person's privacy interest). The e-mail addresses at issue are not of a type specifically excluded by section 552.137(c). You do not inform us that a member of the public has affirmatively consented to the release of any e-mail address contained in the submitted materials. Therefore, the district must withhold the e-mail addresses we have marked under section 552.137.

In summary, the district must withhold the following information: (1) the CHRI we have marked under section 552.101 of the Government Code in conjunction with subchapter F of chapter 411 of the Government Code; (2) the information we have marked in Exhibits C and D under section 552.117 of the Government Code; (3) if the peace officers not employed by the district elected confidentiality for their personal information, the telephone numbers, addresses, and family information of these officers must be withheld under section 552.1175 of the Government Code; (4) the driver's license information we have marked under section 552.130 of the Government Code; and (5) the e-mail addresses we have marked under section 552.137 of the Government Code. The remaining 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).

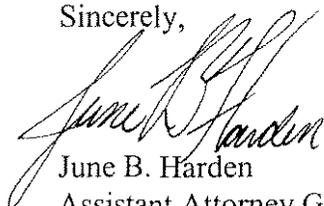
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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 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,



June B. Harden
Assistant Attorney General
Open Records Division

JBH/mcf

Ref: ID# 295825

Enc. Submitted documents

c: Mr. Bert D. Edmondson
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(w/o enclosures)