



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 15, 2008

Ms. Pamela Smith
Assistant General Counsel
Texas Department of Public Safety
P. O. Box 4087
Austin, Texas 78773-000

OR2008-09579

Dear Ms. Smith:

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# 317947.

The Texas Department of Public Safety (the "department") received three requests from different requestors for the criminal history of employees in several school districts. You state that some of the requested information will be released to one of the requestors. 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 representative sample of information.¹

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 chapter 411 of the Government Code. Chapter 411 authorizes DPS to compile and maintain criminal history record information ("CHRI") from law enforcement agencies throughout the state and to maintain access for

¹We assume that the "representative 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.

authorized persons to federal criminal history records. *See* Gov't Code §§ 411.042, .087. CHRI is defined as "information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions." *Id.* § 411.082(2).

In 2007, the Legislature enacted section 411.0845 of the Government Code, which provides in pertinent part as follows:

(a) The department shall establish an electronic clearinghouse and subscription service to provide criminal history record information to a particular person entitled to receive criminal history record information and updates to a particular record to which the person has subscribed under this subchapter.

(b) On receiving a request for criminal history record information from a person entitled to such information under this subchapter, the department shall provide through the electronic clearinghouse:

(1) the criminal history record information reported to the department or the Federal Bureau of Investigation relating to the individual who is the subject of the request; or

(2) a statement that the individual who is the subject of the request does not have any criminal history record information reported to the department or the Federal Bureau of Investigation.

....

(d) The department shall ensure that the information described by Subsection (b) is provided only to a person otherwise entitled to obtain criminal history record information under this subchapter. Information collected under this section is confidential and is not subject to disclosure under [the Act].

(e) A person entitled to receive criminal history record information under this section must provide the department with the following information regarding the person who is the subject of the criminal history record information requested:

(1) the person's full name, date of birth, sex, Texas driver's license number or personal identification certificate number, and social security number;

(2) a recent electronic digital image photograph of the person and a complete set of the person's fingerprints as required by the department; and

(3) any other information required by the department.

Id. § 411.0845(a), (b), (d), (e). Pursuant to section 22.083(a-1) of the Education Code, a school district is authorized to obtain this CHRI from the department. Educ. Code § 22.083(a-1)(1); *see also* Gov't Code § 411.097.

You state that the submitted information consists of clearinghouse reports subject to section 411.0845 of the Government Code. In this instance, the requestors are not entitled to criminal history record information from the department under this subchapter. *See* Gov't Code § 411.085(d). Based on your representations and our review, we find that the submitted clearinghouse records are confidential under section 411.0845(d) of the Government Code. Therefore, the department must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 411.0845(d). *Id.* § 411.0845(d) (providing that information collected under section 411.0845 is confidential and not subject to disclosure under the Act).

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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3). If the governmental body does not file suit over 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 challenge 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,



Bill Longley
Assistant Attorney General
Open Records Division

BL/eeg

Ref: ID# 317947

Enc. Submitted documents

c: Ms. April Molina
KSAT 12 News
1408 North St. Mary's Street
San Antonio, Texas 78215
(w/o enclosures)

Ms. Eva Ruth Moravec
Education Reporter
San Antonio Express-News
P.O. Box 2171
San Antonio, Texas 78297-2171
(w/o enclosures)

Ms. Shari St. Clair
KSAT 12 News
1408 North St. Mary's Street
San Antonio, Texas 78215
(w/o enclosures)