



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 5, 2008

Mr. Ricardo R. Lopez
Feldman, Rogers, Morris & Grover, L.L.P.
517 Soledad Street
San Antonio, Texas 78205-1508

OR2008-10534

Dear Mr. Lopez:

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# 318209.

The North East Independent School District (the "district"), which you represent, received a request for the names of employees with criminal histories, the criminal charges filed against those employees, and the actions taken by the district regarding those employees. You claim that the requested letters and criminal history reports are 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 representative sample of information.¹

Initially, you inform us that the requested criminal history reports were the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2008-09045 (2008). In that ruling, we concluded that the district must withhold the submitted criminal history reports in their entirety under section 552.101 of the Government Code in conjunction with section 411.0845(d) of the Government Code. As we have no

¹ We 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.

indication that the law, facts, and circumstances on which the prior ruling was based have changed, the district must continue to rely on that ruling as a previous determination and withhold the requested criminal history reports in accordance with Open Records Letter No. 2008-09045.² See Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

You seek to withhold the letters in Exhibits C and D under section 552.102 of the Government Code, which 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. A compilation of an individual's criminal history is highly embarrassing information, the publication of which would be highly objectionable to a reasonable person. Cf. *U. S. Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (when considering prong regarding individual's privacy interest, court recognized distinction between public records found in courthouse files and local police stations and compiled summary of information and noted that individual has significant privacy interest in compilation of one's criminal history). Moreover, we find that a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. However, this office has also found that the public has a legitimate interest in information relating to employees of governmental bodies and their employment qualifications and job performance. See Open Records Decision Nos. 470 at 4 (1987), 444 at 5-6 (1986) (public has legitimate interest in knowing reasons for dismissal, demotion, promotion, or resignation of public employees), 423 at 2 (1984) (scope of public employee privacy is narrow).

The letters in Exhibits C and D that you seek to withhold pertain to district employees, not private citizens. Because the employees' compiled criminal history information was gathered in the course of their employment, there is a legitimate public interest in this

² As our ruling for this information is dispositive, we need not address your remaining argument against disclosure of this information.

information. Accordingly, section 552.102 is not applicable to the letters in Exhibits C and D, and the information may not be withheld on this basis.

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 information protected by other statutes, such as section 21.355 of the Education Code, which provides that “[a] document evaluating the performance of a teacher or administrator is confidential.” Educ. Code § 21.355. This office has interpreted section 21.355 to apply to any document that evaluates, as that term is commonly understood, the performance of a teacher or an administrator. *See* Open Records Decision No. 643 (1996). In Open Records Decision No. 643, we determined that for purposes of section 21.355, the word “teacher” means a person who is required to, and does in fact, hold a teaching certificate under subchapter B of chapter 21 of the Education Code or a school district teaching permit under section 21.055, and who is engaged in the process of teaching, as that term is commonly defined, at the time of the evaluation. *See* ORD 643 at 4. We also determined that the word “administrator” in section 21.355 means a person who is required to, and does in fact, hold an administrator’s certificate under subchapter B of chapter 21 of the Education Code, and is performing the functions of an administrator, as that term is commonly defined, at the time of the evaluation. *Id.* The Third Court of Appeals has held that a written reprimand constitutes an evaluation for purposes of section 21.355. *See Abbott v. North East Indep. Sch. Dist.*, 212 S.W.3rd 364 (Tex. App.—Austin, 2006).

You claim that the letter of reprimand in Exhibit C constitutes an evaluation of an individual who held a teaching or administrator certificate and was employed as a teacher or administrator at the time of the evaluation. Based on your representation and our review, we agree that Exhibit C is confidential under section 21.355 of the Education Code and must be withheld from disclosure under section 552.101 of the Government Code.³

Section 552.101 also encompasses chapter 411 of the Government Code. Chapter 411 authorizes the Texas Department of Public Safety (the “DPS”) to compile and maintain criminal history record information (“CHRI”) from law enforcement agencies throughout the state and to maintain access for 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 relevant part:

³ As our ruling is dispositive for this information, we need not address your remaining argument against disclosure of this information.

(a) The [DPS] 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 [DPS] shall provide through the electronic clearinghouse:

(1) the criminal history record information reported to the [DPS] 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 [DPS] or the Federal Bureau of Investigation.

...

(d) The [DPS] 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].

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

You claim the letters written by the district in Exhibit D are confidential because they contain employee names that were taken from criminal history reports obtained from the DPS clearinghouse pursuant to section 411.0845 of the Government Code. Based on your representations and our review of the letters, we conclude that the district must withhold the employee names obtained from the clearinghouse contained in the letters in Exhibit D under section 552.101 in conjunction with section 411.0845 of the Government Code. *Id.* § 411.0845(d)(providing that information collected under section 411.0845 is confidential and not subject to disclosure under the Act). We find, however, that the district has failed to demonstrate how the remaining information in the letters in Exhibit D constitutes confidential information obtained from the clearinghouse reports, and this information may not be withheld under section 552.101 on that basis.

We note that the remaining information in Exhibit D contains an employee's home address, which may be protected 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.⁴ Gov't Code § 552.117(a)(1). We note that a post office box number is not a "home address" for purposes of section 552.117. *See* Gov't Code § 552.117; Open Records Decision No. 622 at 4 (1994) (legislative history makes clear that purpose of Gov't Code § 552.117 is to protect public employees from being harassed *at home*) (citing House Committee on State Affairs, Bill Analysis, H.B. 1976, 69th Leg. (1985); Senate Committee on State Affairs, Bill Analysis, H.B. 1976, 69th Leg. (1985)) (emphasis added). Whether information is protected by section 552.117(a)(1) must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Pursuant to section 552.117(a)(1), the district must withhold the home address of a current or former employee of the district who elected, prior to the district's receipt of the request for information, to keep such information confidential. You have not informed us whether the employee whose home address is at issue in Exhibit D chose to withhold his or her home address prior to the district's receipt of the request for information. Therefore, if the employee timely elected to withhold his or her home address, the district must withhold this information in Exhibit D pursuant to section 552.117(a)(1) of the Government Code. If the employee did not timely elect to withhold his or her home address, then the district may not withhold any of the remaining information in Exhibit D under section 552.117(a)(1) of the Government Code.

In summary, the district must: continue to rely on our prior ruling in Open Records Letter No. 2008-09045 for the criminal history reports that were at issue in that request; withhold Exhibit C under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code; and withhold the employees' names listed in the letters in Exhibit D under section 552.101 in conjunction with section 411.0845 of the Government Code. If the home address listed in Exhibit D belongs to a district employee who timely elected under section 552.024, the district must withhold the address information under section 552.117(a)(1) 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 file suit in

⁴ The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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).

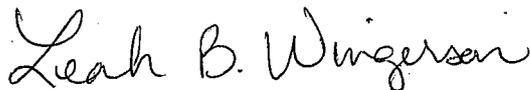
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records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



Leah B. Wingerson
Assistant Attorney General
Open Records Division

LBW/ma

Ref: ID# 318209

Enc. Submitted documents

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