



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

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Ms. Leslie McCollom
O'Hanlon, McCollom & Demerath
Attorneys and Counselors at Law
808 West Avenue
Austin, Texas 78701

OR2008-10550

Dear Ms. McCollom:

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# 318029.

The Austin Independent School District (the "district"), which you represent, received a request for the name of the person who has a criminal background at a specified elementary school and the offense or offenses identified from the criminal background check. 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.

Initially, we note that because the request for information only asked for the name of the person who has a criminal background and the offense or offenses identified from the criminal background check, most of the submitted information is not responsive to the instant request for information. We have marked the information that is responsive to the request. This ruling does not address the public availability of any information that is not responsive to the request, and the district need not release that information in response to this request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dis'd).

Next, we address your argument that the responsive information is excepted from disclosure under section 552.101 of the Government Code. Section 552.101 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 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 pertinent part as follows:

(a) [DPS] shall establish an electronic clearinghouse and subscription service to provide [CHRI] to a particular person entitled to receive [CHRI] and updates to a particular record to which the person has subscribed under this subchapter.

(b) On receiving a request for [CHRI] from a person entitled to such information under this subchapter, [DPS] shall provide through the electronic clearinghouse:

(1) the [CHRI] reported to [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 [CHRI] reported to [DPS] or the Federal Bureau of Investigation.

(d) [DPS] shall ensure that the information described by Subsection (b) is provided only to a person otherwise entitled to obtain [CHRI] 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 [CHRI] under this section must provide [DPS] with the following information regarding the person who is the subject of the [CHRI] 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 [DPS]; and

(3) any other information required by [DPS].

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 DPS. Educ. Code § 22.083(a-1)(1); *see also* Gov't Code § 411.097.

You state that the district obtained the information in Exhibit 3 from the DPS clearinghouse pursuant to section 411.0845 of the Government Code. You further state that the district created Exhibit 4 by combining information obtained from the clearinghouse reports with information the district already maintained. You indicate that the district obtained the portions of Exhibit 4 that are responsive to the instant request from the DPS clearinghouse reports. Based on your representations and our review, we find that the responsive information in Exhibits 3 and 4 is confidential under section 411.0845(d) of the Government Code. Therefore, the district must withhold the responsive information in Exhibits 3 and 4 under section 552.101 of the Government Code in conjunction with section 411.0845(d).¹ *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).

¹As our ruling is dispositive, we need not address the district's remaining arguments against disclosure of the responsive information.

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,



Laura E. Ream
Assistant Attorney General
Open Records Division

LER/jb

Ref: ID# 318029

Enc. Submitted documents

c: Ms. Marisa Campuzano
c/o Ms. Leslie McCollom
O'Hanlon, McCollom & Demerath
Attorneys and Counselors at Law
808 West Avenue
Austin, Texas 78701
(w/o enclosures)