



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 13, 2008

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

OR2008-11064

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# 318668.

The Lancaster Independent School District (the "district"), which you represent, received a request for the personnel records of a named district employee. You state that you will release a portion of the responsive information to the requestor redacted in accordance with FERPA.<sup>1</sup> You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.117 of the Government Code.<sup>2</sup> We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that you have redacted portions of the submitted information. Pursuant to section 552.147(b) of the Government Code, all governmental bodies may redact social security numbers of living individuals without requesting a decision from this office. *See* Gov't Code § 552.147(b). Accordingly, the district may withhold the social security numbers you have marked under section 552.147. For the remaining redacted information, we note that pursuant to section 552.301 of the Government Code, a governmental body that seeks to withhold requested information must submit to this office a copy of the information, labeled to indicate which exceptions apply to which parts of the copy, unless the governmental body has received a previous determination for the information at issue. *Id.* §§ 552.301(a), .301(e)(1)(D). You do not assert, nor does our review of the records indicate,

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<sup>1</sup>The Department of Education has informed this office that it is the responsibility of the educational agency or institution to make determinations under FERPA. A copy of the Department of Education's letter may be found on the Office of the Attorney General's website at <http://www.oag.state.tx.us/open/20060725usdoe.pdf>.

<sup>2</sup>Although you assert that Exhibit B is excepted from disclosure under section 552.108, based on your arguments we understand you to be raising section 552.101.

that you have been authorized to withhold any of the remaining redacted information without seeking a ruling from this office. *See id.* § 552.301(a); Open Records Decision 673 (2000). As such, these types of information must be submitted in a manner that enables this office to determine whether the information comes within the scope of an exception to disclosure. In this instance, we can discern the nature of the redacted information; thus, being deprived of that information does not inhibit our ability to make a ruling. In the future, however, the district should refrain from redacting any information it submits to this office in seeking an open records ruling. Redaction of such information may result in a determination that the information must be released. *See Gov't Code* § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App. —Austin 1990, no writ).

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. Criminal history record information (“CHRI”) generated by the National Crime Information Center (“NCIC”) or by the Texas Crime Information Center (“TCIC”) is confidential. Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* Section 411.083 of the Government Code deems confidential CHRI that the Texas Department of Public Safety (“DPS”) maintains, except that the DPS may disseminate this information as provided in chapter 411, subchapter F 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 Government Code chapter 411, subchapter F. *See id.* § 411.082(2)(B) (term CHRI does not include driving record information). Accordingly, the district must withhold the CHRI that we have marked under section 552.101 of the Government Code in conjunction with federal law and chapter 411 of the Government Code.

Section 552.117(a)(1) of the Government Code excepts from disclosure the current and former home addresses and telephone numbers, social security number, 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. Whether a particular piece of 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).* You state, and provide supporting documentation showing, that the employee at issue elected to keep these types of information confidential before the district received the request for information. Based upon your representations and our review, we conclude that the district must withhold most of the information you have marked under section 552.117.

However, section 552.117 only applies to current and former home telephone numbers. Thus, you may not withhold the employee's former business telephone numbers. Further, section 552.117 does not apply to an employee's email address. Accordingly, with the exception of the business phone numbers, which we have marked for release, and the marked e-mail address, you must withhold the information you have marked in Exhibit A under section 552.117.

We note that an e-mail address that is excepted from disclosure under section 552.137 of the Government Code, which requires a governmental body to withhold the e-mail address of a member of the general public, unless the individual to whom the e-mail address belongs has affirmatively consented to its public disclosure.<sup>3</sup> See Gov't Code § 552.137 (b). You do not inform us that the owner of the e-mail address has affirmatively consented to release. Therefore, unless the district receives consent to release it, the district must withhold the e-mail address we have marked under section 552.137.

In summary, you must withhold the information we have marked in Exhibit B under section 552.101 in conjunction with chapter 411 of the Government Code. With the exception of the business phone numbers, which we have marked for release, and the marked e-mail address, you may withhold the information you have marked in Exhibit A under section 552.117. Unless the district receives consent to release it, the district must withhold the e-mail address we have marked under section 552.137. 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 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), (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

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<sup>3</sup>The Office of the Attorney General will raise a mandatory exception, such as section 552.137, on behalf of a governmental body, but ordinarily will not raise other exceptions. See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

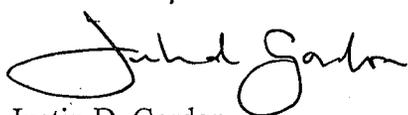
statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental 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,



Justin D. Gordon  
Assistant Attorney General  
Open Records Division

JDG/eeg

Ref: ID# 318668

Enc. Submitted documents

c: Ms. Megan Gray  
The Ellis County Press  
208 South Central Avenue  
Ferris, Texas 75125  
(w/o enclosures)