



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 2, 2009

Mr. Fortunato G. Paredes  
Escamilla & Poneck, Inc.  
216 W. Village Boulevard., Suite 202  
Laredo, Texas 78041

OR2009-04335

Dear Mr. Paredes:

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# 338887.

The Clint Independent School District (the "district"), which you represent, received a request for reports or notes pertaining to specified interrogations, the requestor's personnel file, and specified audit reports. You state the district has released some of the requested information. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.111, 552.117, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

You indicate that the district does not possess any handwritten notes taken during the named consultant's interview of one district employee. We note that a governmental body has a duty to make a good faith effort to relate a request for information to information that the governmental body holds. Open Records Decision No. 561 (1990). However, the Act generally does not require a governmental body to obtain information not in its possession or create new information in response to an open records request. *See* Open Records Decision Nos. 599 (1992), 534 (1989). You do not indicate whether the district maintains or has access to any other notes taken by the named consultant during interrogations. To the extent such notes exist, we assume they have been released to the requestor. If not, the district must release them at this time. *See* Gov't Code §§ 552.006, .301, .302; Open Records Decision No. 664 (2000) (concluding that section 552.221(a) requires that

information not excepted from disclosure must be released as soon as possible under the circumstances).

Next, we note that some of the submitted information is subject to section 552.022 of the Government Code. Under section 552.022(a)(1), a completed report, audit, evaluation, or investigation made of, for, or by a governmental body is expressly public unless it either is excepted under section 552.108 of the Government Code or is expressly confidential under other law. Based on your representations and our review, we find that the information submitted as Exhibit C consists of a consultant's completed investigation made for the district. Although you assert this information is excepted under section 552.111 of the Government Code, this section is a discretionary exception under the Act and does not constitute "other law" for purposes of section 552.022. *See* Open Records Decision Nos. 663 (1999) (governmental body may waive section 552.111). Accordingly, the district may not withhold Exhibit C under section 552.111. However, because information that is subject to section 552.022(a)(1) may be withheld under mandatory exceptions, we will consider whether the information in Exhibit C is confidential under the mandatory exceptions you claim.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. The submitted information contains an I-9 form (Employment Eligibility Verification), which is governed by section 1324a of title 8 of the United States Code. This section provides that an I-9 form and "any information contained in or appended to such form, may not be used for purposes other than for enforcement of this chapter" and for enforcement of other federal statutes governing crime and criminal investigations. *See* 8 U.S.C. § 1324a(b)(5); *see also* 8 C.F.R. § 274a.2(b)(4). Release of the form in this instance would be "for purposes other than for enforcement" of the referenced federal statutes. Accordingly, we conclude that the I-9 form is confidential and may only be released in compliance with the federal laws and regulations governing the employment verification system.

Section 552.101 of the Government Code likewise encompasses chapter 411 of the Government Code. Criminal history record information ("CHRI") maintained by the Texas Department of Public Safety ("DPS") is deemed confidential under section 411.083 of the Government Code; however, DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See* Gov't Code § 411.083. Section 411.084 governs use of CHRI obtained from DPS and provides:

(a) Criminal history record information obtained from the department under this subchapter:

(1) is for the exclusive use of the authorized recipient of the information; and

(2) *may be disclosed* or used by the recipient only if, and only *to the extent that, disclosure or use is authorized* or directed by:

(A) *this subchapter*;

(B) another statute;

(C) a rule adopted under a statute; or

(D) an order of a court of competent jurisdiction

(b) Notwithstanding Subsection (a) or any other provision in this subchapter, criminal history record information obtained from the Federal Bureau of Investigation may be released or disclosed only to a governmental entity or as authorized by federal statute, federal rule, or federal executive order.

Gov't Code § 411.084 (emphasis added). Section 411.097, which is part of subchapter F of chapter 411 of the Government Code, authorizes a school district to obtain from DPS CHRI that the district is required or authorized to obtain under subchapter C of chapter 22 of the Education Code. *See* Gov't Code § 411.097; Educ. Code § 22.083. Subsection 411.097(d) governs the release of CHRI by a school district and provides:

Criminal history record information obtained by a school district, charter school, private school, service center, commercial transportation company, or shared services arrangement under Subsection (a), (b), or (c) *may not be released or disclosed to any person, other than the individual who is the subject of the information*, the Texas Education Agency, the State Board for Educator Certification, or the chief personnel officer of the transportation company, if the information is obtained under Subsection (a)(2).

Gov't Code § 411.097(d) (emphasis added). Based on your indication and our review of the submitted information, we note that the submitted CHRI was obtained pursuant to section 411.097. Therefore, this information must generally be withheld under section 552.101 of the Government Code in conjunction with section 411.083. However, we note that in this instance, the requestor is the subject of some of the requested CHRI. Pursuant to 411.097(d), the requestor is authorized to obtain from the district the CHRI received from DPS to the extent it pertains to him. Under these circumstances, we conclude that the CHRI pertaining to the requestor must be released. The remaining CHRI, which we have marked, must be withheld under section 552.101 in conjunction with chapter 411 of the Government Code.

You assert that some of the remaining submitted information 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. 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 this personal information that pertains to 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. Such information may not be withheld under section 552.117 for individuals who did not make a timely election. You do not inform us, and the submitted information does not reflect, whether the district employees at issue elected to keep their information confidential pursuant to section 552.024 of the Government Code prior to the district receiving the request at issue. We have marked information that must be withheld if section 552.117 applies.<sup>1</sup> We note that section 552.117 protects personal privacy. Therefore, the requestor has a right of access to the information concerning himself, and that information may not be withheld from him under section 552.117. *See* Gov't Code § 552.023; Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself).

Finally, you assert that portions of the remaining information are excepted from disclosure under section 552.101 of the Government Code in conjunction with common-law privacy, section 552.102, and section 552.130. We note, however, that common-law privacy, section 552.102, and section 552.130 protect the privacy of the individual to whom the information relates. Therefore, a person's information that would otherwise be withheld under these exceptions must be released to that person or that person's authorized representative. *See* Gov't Code § 552.023 (person or person's authorized representative has special right of access to information that is protected by laws intended to protect person's privacy); Open Records Decision No. 481 at 4 (1987). Because the requestor in this instance has a special right of access to the information at issue that pertains to him, the district may not withhold any of the information you seek to withhold under common-law privacy, section 552.102, or section 552.130.

In summary, the district must withhold the submitted I-9 form we have marked under section 552.101 in conjunction with 8 U.S.C. § 1324a. The CHRI we have marked pertaining to individuals other than the requestor must be withheld under section 552.101 in conjunction with chapter 411 of the Government Code. Finally, to the extent the employees at issue made a timely election under section 552.024, the district must withhold the

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<sup>1</sup>To the extent that the employees' social security numbers are not excepted from disclosure under section 552.117(a)(1), we note that section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act.

information we have marked under section 552.117(a)(1). The remaining submitted information must be released.<sup>2</sup>

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Bob Davis  
Assistant Attorney General  
Open Records Division

RSD/cc

Ref: ID# 338887

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)

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<sup>2</sup>We note that the requestor has a right of access to information in the submitted documents that otherwise would be excepted from release under the Act. *See* Gov't Code § 552.023. Thus, the district must again seek a decision from this office if it receives a request for this information from a different requestor.