



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 27, 2010

Ms. Melanie L. Hollmann
Atkins, Hollmann, Jones, Peacock, Lewis & Lyon
3800 East 42nd Street, Suite 500
Odessa, Texas 79762

OR2010-01297

Dear Ms. Hollmann:

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# 368360.

The Ector County Independent School District (the "district"), which you represent, received a request for the portion of a named individual's employment application pertaining to "prior arrests and/or convictions." You claim the submitted criminal history background check consent form is excepted from disclosure under sections 552.101, 552.116, and 552.117 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

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 that other statutes make confidential. You assert the submitted consent form should be withheld pursuant to section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), which make confidential social security numbers and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See* Open Records Decision No. 622 (1994). You indicate, however, the district has redacted the social security number contained in the submitted consent form pursuant to section 552.147 of the

Government Code.¹ Furthermore, you have not provided any comments explaining how section 405 of title 42 of the United States Code applies to the remaining information in the consent form. *See* Gov't Code § 552.301(e)(1)(A) (governmental body must explain how claimed exception to disclosure applies). Consequently, you have failed to demonstrate the applicability of section 405 of title 42 of the United States Code to the submitted consent form, and the district may not withhold the information under section 552.101 of the Government Code on this basis.

You also assert the submitted consent form is protected under common-law privacy. Section 552.101 also encompasses the doctrine of common-law privacy, which protects information that (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. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). This office has found the public has a legitimate interest in information relating to applicants and employees of governmental bodies and their employment qualifications. *See* Open Records Decision Nos. 562 at 10 (1990), 542 at 5 (1990), 470 at 4 (1987) (public has legitimate interest in job qualifications and performance of public employees); *see also* Open Records Decision No. 423 at 2 (1984) (scope of public employee privacy is narrow). In this instance, the submitted information was provided to the district by the named individual as part of his employment application. Thus, we find there is a legitimate public interest in this information. Consequently, the district may not withhold the submitted information under section 552.101 of the Government Code in conjunction with common-law privacy. *Cf. U. S. Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (noting private citizen has significant privacy interest in one's compiled criminal history when compiled by outside source).

Section 552.116 of the Government Code provides:

(a) An audit working paper of an audit of the state auditor or the auditor of a state agency, an institution of higher education as defined by Section 61.003, Education Code, a county, a municipality, a school district, or a joint board operating under Section 22.074, Transportation Code, including any audit relating to the criminal history background check of a public school employee, is excepted from the requirements of Section 552.021. If information in an audit working paper is also maintained in another record, that other record is not excepted from the requirements of Section 552.021 by this section.

(b) In this section:

¹Section 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.

(1) "Audit" means an audit authorized or required by a statute of this state or the United States, the charter or an ordinance of a municipality, an order of the commissioners court of a county, a resolution or other action of a board of trustees of a school district, including an audit by the district relating to the criminal history background check of a public school employee, or a resolution or other action of a joint board described by Subsection (a) and includes an investigation.

(2) "Audit working paper" includes all information, documentary or otherwise, prepared or maintained in conducting an audit or preparing an audit report, including:

(A) intra-agency and interagency communications; and

(B) drafts of the audit report or portions of those drafts.

Gov't Code § 552.116. You generally claim the submitted criminal history background check consent form is excepted from disclosure under section 552.116. As you acknowledge, however, the consent form was obtained as part of the named individual's employment application. You have not submitted any comments explaining the submitted consent form was prepared or maintained in relation to an audit authorized or required by any of the laws or authorities specified in section 552.116(b)(1). *See id.* § 552.301(e)(1)(A). Therefore, we find you have failed to demonstrate the applicability of section 552.116 to the submitted information. Consequently, the submitted consent form may not be withheld under section 552.116 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 numbers, and family member information of current or former officials or employees of a governmental body who request this information be kept confidential under section 552.024 of the Government Code. *Id.* § 552.117(a)(1). 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)*. The district may only withhold information under section 552.117(a)(1) on behalf of current or former officials or employees who made requests for confidentiality under section 552.024 prior to the date on which the request for this information was made.

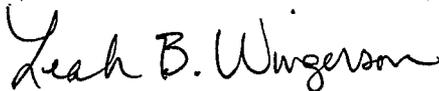
The submitted document includes the named individual's home address and telephone number, which we have marked. You have not informed us, however, whether or not the named individual is a current or former district employee. Furthermore, if the individual is a current or former district employee, you have not informed us the individual timely chose to not allow public access to his personal information. Therefore, if the named individual is a current or former district employee and timely elected to withhold his home address and

telephone number, the district must withhold the information we have marked pursuant to section 552.117(a)(1) of the Government Code. As no other exceptions to disclosure have been claimed, the remaining information must be released. However, if the individual is not a current or former district employee or did not timely elect to withhold his home address and telephone number, then the district may not withhold the marked information under section 552.117(a)(1) of the Government Code and the submitted information must be released.

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, 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, toll free, at (888) 672-6787.

Sincerely,



Leah B. Wingerson
Assistant Attorney General
Open Records Division

LBW/cc

Ref: ID# 368360

Enc. Submitted documents

c: Requestor
(w/o enclosures)