



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 25, 2010

Mr. B. Chase Griffith  
Brown & Hofmeister, L.L.P.  
740 East Campbell Road, Suite 800  
Richardson, Texas 75081

OR2010-07550

Dear Mr. Griffith:

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# 380500 (ORR# 10-2447).

The McKinney Police Department (the "department"), which you represent, received a request from an investigator with the Texas Education Agency (the "TEA") for all offense, incident, investigative reports, witness statements, photographs, video and audio recordings, and confessions pertaining to a specified offense involving a named educator. You claim portions of the submitted information are excepted from disclosure under section 552.101 of the Government Code. We have considered the exception 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" and encompasses information protected by other statutes, such as section 21.12(a) of the Penal Code. Gov't Code § 552.101. Section 21.12(a) provides a public or private school employee commits an offense if the employee engages in "sexual contact, sexual intercourse, or deviate sexual intercourse with a person who is enrolled in a public or private primary or secondary school at which the employee works and who is not the employee's spouse[.]" Penal Code § 21.12(a)(1). Additionally, section 21.12(d) provides "[t]he name of a person who is enrolled in a public or private primary or secondary school and involved in an improper relationship with an educator as provided by Subsection (a) may not be released to the public and is not public information under Chapter 552, Government Code." *Id.* § 21.12(d). You

seek to withhold the identity of a student allegedly involved in an improper relationship with an educator. We have marked the name of the student allegedly involved in an improper relationship with an educator. The department must withhold the marked information under section 552.101 in conjunction with section 21.12. If the department lacks the technical capability to redact the information we have marked from the submitted recording, the department must withhold the recording in its entirety. The remaining information does not constitute the name of a student involved in an improper relationship with an educator; thus, the department may not withhold any portion of the remaining information under section 552.101 in conjunction with section 21.12.

Section 552.101 of the Government Code also encompasses the common-law right of 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). The types of information considered intimate or embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. Upon review, we find the information we have marked is highly intimate or embarrassing and of no legitimate public interest. Thus, the department must withhold the information we have marked under section 552.101 in conjunction with common-law privacy.

Next, we note the remaining information contains a Texas driver's license number, which is subject to section 552.130 of the Government Code.<sup>1</sup> Section 552.130 excepts from disclosure "information [that] relates to . . . a motor vehicle operator's or driver's license or permit issued by an agency of this state[.]" Gov't Code § 552.130(a)(1). Accordingly, the department must withhold the Texas driver's license number we have marked in the remaining information under section 552.130.

Next, we must address whether the requestor has access to any of the information being withheld. As noted above, the requestor is an investigator for the TEA, which has assumed the duties of the State Board for Educator Certification (the "SBEC"), and states the TEA is conducting an investigation of a named educator who has applied for or currently holds educator credentials.<sup>2</sup> Section 22.082 of the Education Code provides the SBEC "may obtain from any law enforcement or criminal justice agency all criminal history record information

---

<sup>1</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

<sup>2</sup>The 79th Texas Legislature passed House Bill 1116, which required the transfer of SBEC's administrative functions and services to the TEA, effective September 1, 2005.

and all records contained in any closed criminal investigation file that relate to a specific applicant for or holder of a certificate.” Educ. Code § 22.082. Section 411.090 of the Government Code grants a right of access for the SBEC to obtain criminal history record information (“CHRI”) from the Department of Public Safety (“DPS”) on persons who have applied to the SBEC. *See* Gov’t Code § 411.090. Additionally, section 411.0901 of the Government Code specifically provides the TEA with a right of access to obtain CHRI maintained by DPS on certain school employees or applicants for employment. *See id.* § 411.0901. Furthermore, pursuant to section 411.087 of the Government Code, an agency that is entitled to obtain CHRI from DPS is also authorized to “obtain from any other criminal justice agency in this state criminal history record information maintained by that [agency].” *Id.* § 411.087(a)(2). CHRI consists of “information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, information, and other formal criminal charges and their dispositions.” *Id.* § 411.082(2). Although section 22.082 authorizes the TEA to obtain CHRI, we note none of the information being withheld pursuant to section 552.101 of the Government Code in conjunction with section 21.12 of the Penal Code and common-law privacy, or under section 552.130 of the Government Code consists of CHRI pertaining to the named educator as defined by section 411.082(2) of the Government Code. *See id.* § 411.082(2). Therefore, we conclude the TEA does not have a right of access pursuant to section 22.082 to any portion of the information being withheld.

In summary, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 21.12 of the Penal Code. If the department lacks the technical capability to redact the marked information from the submitted recording, the recording must be withheld in its entirety. The department must also withhold the (1) information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy and (2) Texas driver’s license number we have marked under section 552.130 of the Government Code.<sup>3</sup> The remaining 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.

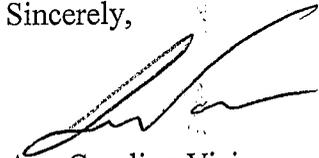
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General’s Open Government Hotline, toll free,

---

<sup>3</sup>We note this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including a Texas driver’s license number under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

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,



Ana Carolina Vieira  
Assistant Attorney General  
Open Records Division

ACV/eeg

Ref: ID# 380500

Enc. Submitted documents

c: Requestor  
(w/o enclosures)