



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 2, 2010

Mr. Philip Marzec
Escamilla, Poneck & Cruz, L.L.P.
P.O. Box 200
San Antonio, Texas 78291-0200

OR2010-09811

Dear Mr. Marzec:

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# 385110.

The San Antonio Independent School District (the "district"), which you represent, received a request for information regarding criminal background checks of district employees. You claim the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we must address the district's obligations under the Act. Section 552.301 of the Government Code describes the procedural obligations placed on a governmental body that receives a written request for information it wishes to withhold. Pursuant to section 552.301(e) of the Government Code, the governmental body is required to submit to this office within fifteen business days of receiving the request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See* Gov't Code § 552.301(e). In this instance, you state the district received the request for information on April 12, 2010, and that the requestor clarified his request on April 14, 2010. Thus, the department's fifteen-business-day deadline was May 5, 2010. However, you did not submit the requested

information until June 9, 2010. Thus, we find the district failed to comply with the requirements of section 552.301(e).

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the requirements of section 552.301 results in the legal presumption that the information is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ); *see also* Open Records Decision No. 630 (1994). Normally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third-party interests are at stake. *See* Open Records Decision No. 150 at 2 (1977). Although you assert section 552.108 of the Government Code as an exception to disclosure, this exception is discretionary in nature. It serves only to protect a governmental body's interests and may be waived; as such, it does not constitute a compelling reason to withhold information for purposes of section 552.302. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions in general), 177 (1977) (statutory predecessor to section 552.108 subject to waiver). Consequently, the district may not withhold any of the submitted information under section 552.108. However, because section 552.101 can provide a compelling reason for non-disclosure, we will address this exception.

Section 552.101 of the Government Code exempts 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. 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 provide access to authorized persons to federal criminal history records. *See id.* §§ 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 relevant part:

- (a) The [DPS] shall establish an electronic clearinghouse and subscription service to provide criminal history record information to a particular person entitled to receive criminal history record information and updates to a particular record to which the person has subscribed under this subchapter.
- (b) On receiving a request for criminal history record information from a person entitled to such information under this subchapter, the [DPS] shall provide through the electronic clearinghouse:

(1) the criminal history record information reported to the [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 criminal history record information reported to the [DPS] or the Federal Bureau of Investigation.

...

(d) The [DPS] shall ensure that the information described by Subsection (b) is provided only to a person otherwise entitled to obtain criminal history record information under this subchapter. Information collected under this section is confidential and is not subject to disclosure under [the Act].

Id. § 411.0845(a)-(b), (d). Pursuant to section 22.083(a-1) of the Education Code, a school district is authorized to obtain this CHRI from the DPS. *See* Educ. Code § 22.083(a-1)(1); *see also* Gov't Code § 411.097. You inform us that the submitted documents consist of information obtained by the district through the criminal history clearinghouse. Based on your representations and our review, we find that portions of the submitted information are confidential under section 411.0845 of the Government Code and must be withheld under section 552.101 of the Government Code.

Next, we understand you to raise section 22.08391 of the Education Code for the remaining submitted information. Section 22.08391 of the Education Code provides in relevant part:

(a) Information collected about a person to comply with this subchapter, including the person's name, address, phone number, social security number, driver's license number, other identification number, and fingerprint records:

(1) may not be released except:

(A) to comply with this subchapter;

(B) by court order; or

(C) with the consent of the person who is the subject of the information;

(2) is not subject to disclosure as provided by Chapter 552, Government Code; and

(3) shall be destroyed by the requestor or any subsequent holder of the information not later than the first anniversary of the date the information is received.

...

(d) Any criminal history record information received by a school district, charter school, private school, regional education service center, commercial transportation company, or education shared services arrangement or an entity that contracts to provide services to a school district, charter school, or shared services arrangement as provided by this subchapter is subject to Section 411.097(d), Government Code.

Educ. Code § 22.08391(a), (d). While section 22.08391 of the Education Code prohibits the release of information about a person collected in order to conduct a criminal history record search, it does not prohibit the release of criminal history record information. Instead, it makes any criminal history record information collected by a school district subject to section 411.097(d) of the Government Code. Accordingly, no portion of the remaining information may be withheld under section 22.08391 of the Education Code. As you raise no further exceptions to disclosure, the remaining information must be released to the requestor.

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,



Amy L.S. Shipp
Assistant Attorney General
Open Records Division

ALS/tp

Ref: ID# 385110

Enc. Submitted documents

c: Requestor
(w/o enclosures)