



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 13, 2010

Ms. Haley Turner
Walsh, Anderson, Brown, Gallegos and Green, P.C.
Attorneys at Law
P.O. Box 460606
San Antonio, Texas 78246

OR2010-12358

Dear Ms. Turner:

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# 388795.

The Forney Independent School District (the "district"), which you represent, received a request for the complete personnel file and any related documents not contained in the personnel file of a named district employee. You indicate you are releasing a majority of the requested information to the requestor. You state you are withholding the employee's W-4 form and a copy of the employee's driver's license pursuant to Open Records Decision No. 684 (2009).¹ You claim that the submitted information is 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." 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

¹We note this office recently issued Open Records Decision No. 684, a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including a W-4 form under section 552.101 of the Government Code in conjunction with section 6103(a) of title 26 of the United States Code and a copy of a Texas driver's license under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

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).

Section 411.0845 of the Government Code, recently amended by the 81st Legislature, provides in pertinent part as follows:

(a) [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, [DPS] shall provide through the electronic clearinghouse:

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

...

(d) [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].

(e) A person entitled to receive criminal history record information under this section must provide [DPS] with the following information regarding the person who is the subject of the criminal history record information requested:

(1) the person’s full name, date of birth, sex, and social security number, and the number assigned to any form of unexpired identification card issued by this state or another state, the District of Columbia, or a territory of the United States that includes the person’s photograph;

(2) a recent electronic digital image photograph of the person and a complete set of the person’s fingerprints as required by [DPS]; and

(3) any other information required by [DPS].

Id. § 411.0845(a)-(b), (d)-(e). Pursuant to section 22.083(a-1) of the Education Code, a school district is authorized to obtain this CHRI from DPS. Educ. Code § 22.083(a-1)(1); *see also* Gov't Code § 411.097(d) (stating that CHRI obtained by a school district in its original form or any subsequent form is not subject to disclosure under the Act), .084(c) (agency may not confirm the existence or nonexistence of CHRI to any person that is not eligible to receive the information).

You inform this office that the submitted document consists of a subsequent form of CHRI obtained by the district pursuant to section 411.0845. You argue that the submitted document cannot be disclosed without necessarily confirming the existence or nonexistence of CHRI regarding the district employee at issue. Based on your representations and our review, we conclude the information we have marked is confidential under section 411.0845 of the Government Code and must be withheld under section 552.101 of the Government Code. However, we find that you have failed to demonstrate how the remaining information at issue constitutes CHRI that DPS provided to the district. Consequently, the district may not withhold any of the remaining information at issue under section 552.101 of the Government Code in conjunction with chapter 411 of the Government Code.

You also raise section 552.101 of the Government Code in conjunction with section 22.08391 of the Education Code. Subchapter C of chapter 22 of the Education Code addresses criminal history records of school district employees and volunteers. 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.

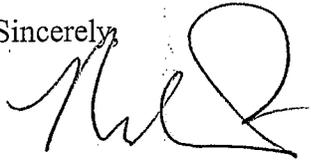
Educ. Code § 22.08391(a), (d). Upon review, we find that you have failed to demonstrate how section 22.08391 of the Education Code is applicable to any of the remaining information. Accordingly, none of the remaining information may be withheld under section 552.101 of the Government Code in conjunction with section 22.08391 of the Education Code.

In summary, the district must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 411.0845 of the Government Code. 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, 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,



Nneka Kanu
Assistant Attorney General
Open Records Division

NK/em

Ref: ID# 388795

Enc. Submitted documents

cc: Requestor
(w/o enclosures)