



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 23, 2011

Mr. W. Montgomery Meitler
Assistant Counsel
Texas Education Agency
1701 North Congress Avenue
Austin, Texas 78701-1494

OR2011-12211

Dear Mr. Meitler:

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# 427888 (TEA PIR# 15547).

The Texas Education Agency (the "TEA") received a request for the original charters written by thirteen specified charter schools in the process of applying for and receiving charter status. You state most of the requested information has been released to the requestor. You further state TEA will redact social security numbers under section 552.147(b) of the Government Code.¹ You claim 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 representative sample of information.²

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

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. *See* Gov't Code § 552.147(b).

²We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

Code § 552.101. Section 552.101 encompasses section 6103 of title 26 of the United States Code, which makes certain federal tax returns and tax return information confidential. *See* 26 U.S.C. § 6103(a); *see also id.* § 6103(b)(1)–(2) (defining “return” and “return information”). However, section 6104 of title 26 provides for the disclosure of tax return information in certain situations:

(d) Public inspection of certain annual returns[.]

(1) In general.—In the case of an organization described in subsection (c) or (d) of section 501 and exempt from taxation under section 501(a) or an organization exempt from taxation under section 527(a) –

(A) a copy of –

(i) the annual return filed under section 6033 . . . by such organization,

...

shall be made available by such organization for inspection during regular business hours by any individual at the principal office of such organization and . . .

(B) upon request of an individual made at such principal office . . . a copy of such annual return . . . shall be provided to such individual without charge other than a reasonable fee for any reproduction and mailing costs.

...

(2) 3-year limitation on inspection of returns.—Paragraph (1) shall apply to an annual return filed under section 6011 or 6033 only during the 3-year period beginning on the last day prescribed for filing such return (determined with regard to any extension of time for filing).

Id. § 6104(d)(1)–(2); *see* 26 C.F.R. § 301.6104(d)-1(a). Thus, a section 501(c) or (d) tax-exempt organization must generally make its annual returns available for public inspection for a period of three years from the last day prescribed for filing. The public disclosure requirement of section 6104(d) for a section 501(c) or (d) organization also applies to certain other specified tax filings in addition to the annual return. *See* 26 U.S.C. § 6104(d)(1)(A).

You state some of the submitted information consists of Form 990s that were filed by entities that are section 501(c) tax-exempt organizations. You further state the dates of filing for the Form 990s were more than three years prior to the date the TEA received the request for information. Thus, based on your representations and our review, we determine the three-year inspection period has lapsed regarding the information at issue, and the requestor does not have a right of inspection under section 6104. Therefore, the information at issue, which you have marked, must be withheld under section 552.101 of the Government Code in conjunction with section 6103(a) of title 26 of the United States Code.

Section 552.101 of the Government Code also encompasses information protected by chapter 411 of the Government Code, which addresses criminal history record information (“CHRI”) generated by the National Crime Information Center or by the Texas Crime Information Center. *Id.* ch. 411. CHRI means “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 provides in relevant part:

(a) [DPS] shall establish an electronic clearinghouse and subscription service to provide [CHRI] to a particular person entitled to receive [CHRI] and updates to a particular record to which the person has subscribed under this subchapter.

(b) On receiving a request for [CHRI] from a person entitled to such information under this subchapter, [DPS] shall provide through the electronic clearinghouse:

(1) the [CHRI] 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 [CHRI] 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 [CHRI] 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). Section 22.082 of the Education Code permits the State Board of Educator Certification (the "SBEC") to access CHRI from the DPS clearinghouse and other police departments, providing:

The [SBEC] shall subscribe to the criminal history clearinghouse as provided by Section 411.0845, Government Code, and may obtain from any law enforcement or criminal justice agency all [CHRI] and all records contained in any closed criminal investigation file that relate to a specific applicant for or holder of a certificate issued under Subchapter B, Chapter 21.

Educ. Code § 22.082 (footnote omitted). You state the TEA has assumed the duties of the SBEC.³ Section 22.08391 governs the confidentiality of information obtained by the SBEC under section 22.082, stating in relevant part:

(b) Any [CHRI] received by the [SBEC] as provided by [subchapter C of chapter 22 of the Education Code] is subject to Section 411.090(b), Government Code.

Id. § 22.08391(b). Section 411.090 of the Government Code provides, in relevant part:

(b) [CHRI] obtained by the [SBEC] in the original form or any subsequent form:

(1) may be used only for a purpose related to the issuance, denial, suspension, or cancellation of a certificate issued by the board;

...

(3) is not subject to disclosure as provided by [the Act.]

Gov't Code § 411.090(b). Thus, any CHRI obtained by the SBEC under section 22.082 of the Education Code, whether from DPS or another law enforcement or criminal justice agency, is not subject to disclosure under the Act. You state some of the remaining information consists of CHRI obtained by SBEC through the DPS criminal history clearinghouse pursuant to section 411.090 of the Government Code. You further state the remaining information at issue consists of CHRI obtained by SBEC under section 22.082 of the Education Code. Based on your representations and our review, we agree the remaining information, which you have marked, is confidential pursuant to sections 411.0845

³ 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 411.090 of the Government Code and must be withheld under section 552.101 of the Government Code.

In summary, the TEA must withhold the information you have marked under section 552.101 of the Government Code in conjunction with section 6103(a) of title 26 of the United States Code. The TEA must withhold the remaining information under section 552.101 of the Government Code pursuant to sections 411.0845 and 411.090 of the Government Code.

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,



Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/agn

Ref: ID# 427888

Enc. Submitted documents

c: Requestor
(w/o enclosures)