



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 1, 2012

Mr. Joe R. Tanguma
Walsh, Anderson, Brown, Gallegos and Green, P.C.
10375 Richmond Avenue, Suite 750
Houston, Texas 77042-4196

OR2012-01651

Dear Mr. Tanguma:

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# 444352.

The New Caney Independent School District (the "district"), which you represent, received a request for the requestor's client's personnel file and information pertaining to allegations against the requestor's client. You state the district will provide most of the responsive information to the requestor. 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. Section 552.101 encompasses information protected by other statutes. Chapter 411 of the Government Code authorizes the Texas Department of Public Safety ("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* Gov't Code §§ 411.042, .087. 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 411.097(b) of the Government Code provides in part “[a] school district . . . is entitled to obtain from [DPS CHRI] maintained by [DPS] that the district . . . is required or authorized to obtain under Subchapter C, Chapter 22, Education Code, that relates to a[n] . . . employee of the district[.]” *Id.* § 411.097(b). Section 22.083(a) of the Education Code requires a school district to obtain CHRI of a district employee. Educ. Code § 22.083(a). Section 411.097(d) provides in relevant part:

[CHRI] obtained by a school district . . . in the original form or any subsequent form:

(1) may not be released to any person except:

(A) the individual who is the subject of the information;

(B) the Texas Education Agency;

(C) the State Board for Educator Certification;

(D) the chief personnel officer of the transportation company, if the information is obtained under Subsection (a)(2); or

(E) by court order; [and]

(2) is not subject to disclosure as provided by Chapter 552[.]

Gov't Code § 411.097(d). You assert the submitted information was obtained from DPS in accordance with chapter 22 of the Education Code. Based on your representations and our review, we conclude the submitted information constitutes CHRI for the purposes of chapter 411. Accordingly, the district must generally withhold this information under section 552.101 of the Government Code in conjunction with sections 411.0845 and 411.097(d) of the Government Code. *See* Gov't Code § 411.097; *see also* Educ. Code § 22.08391(d) (stating CHRI received by school district under subchapter C of chapter 22 of Education Code is subject to section 411.097(d) of Government Code).

However, the requestor is an attorney representing the individual who is the subject of the information. Section 411.097(d) governs the release of CHRI by a school district. Pursuant to section 411.097(d)(1)(A), the individual who is the subject of the information is authorized to obtain from the district the CHRI the district obtained from DPS's electronic clearinghouse. *Id.* Therefore, this CHRI obtained pursuant to section 411.0845 is subject to release to this requestor under section 411.097(d)(1)(A). Therefore, the submitted information must be released to this requestor in its entirety.¹

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,



Sarah Casterline
Assistant Attorney General
Open Records Division

SEC/ag

¹We note that because the requestor has a special right of access to this information in this instance, the district must again seek a decision from this office if it receives another request for the same information from another requestor.

Ref: ID# 444352

Enc. Submitted documents

c: Requestor
(w/o enclosures)