



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 6, 2012

Ms. Leticia McGowan
School Attorney
Dallas Independent School District
3700 Ross Avenue
Dallas, Texas 75204

OR2012-08714

Dear Ms. McGowan:

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# 455594.

The Dallas Independent School District (the "district") received a request for fifteen categories of information related to a reduction in force at a specified district school. You state the district will release some information to the requestor. You claim the remaining requested 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.¹

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 of the Government Code encompasses criminal history record information ("CHRI") protected by chapter 411 of the Government Code. Chapter 411 authorizes the Texas Department of Public Safety ("DPS") to compile and

¹We assume that 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 that those records contain substantially different types of information than that submitted to this office.

maintain 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. Section 411.0845 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. *See* Educ. Code § 22.083(a). Section 411.097(d) provides, in relevant part:

(d) [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 state a portion of the submitted information consists of CHRI obtained from the DPS criminal history clearinghouse in accordance with chapter 22 of the Education Code. Upon review, we find the information we have marked is confidential under section 411.097(d) of the Government Code and must be withheld under section 552.101 of the Government Code.

Section 552.101 also encompasses section 21.355 of the Education Code. Section 21.355 of the Education Code provides in part that “[a] document evaluating the performance of a teacher or administrator is confidential.” Educ. Code § 21.355(a). This office has interpreted section 21.355 to apply to any document that evaluates, as that term is commonly understood, the performance of a teacher or an administrator. *See* Open Records Decision No. 643 (1996). We have determined for purposes of section 21.355, “teacher” means a person who is required to and does in fact hold a teaching certificate under subchapter B of chapter 21 of the Education Code or a school district teaching permit under section 21.055 and who is engaged in the process of teaching, as that term is commonly defined, at the time of the evaluation. *See* ORD 643 at 4. We also have determined “administrator” in section 21.355 means a person who is required to and does in fact hold an administrator’s certificate under subchapter B of chapter 21 of the Education Code and is performing the functions of an administrator, as that term is commonly defined, at the time of the evaluation. *Id.*

You inform us the remaining information pertains to individuals who were employed by the district as either a teacher or an administrator when their performance was evaluated. You state these individuals were required to hold, and did hold, the appropriate certifications under subchapter B of the Education Code. Based on your representations and our review, we agree the remaining information constitutes evaluations as contemplated by section 21.355 of the Education Code. Accordingly, the remaining information must be withheld under section 552.101 of the Government Code in conjunction with section 21.355 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 chapter 411 of the Government Code. The district must withhold the remaining information under section 552.101 of the Government Code in conjunction with section 21.355 of the Education 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,

A handwritten signature in cursive script that reads "Jessica Marsh".

Jessica Marsh
Assistant Attorney General
Open Records Division

JM/bs

Ref: ID# 455594

Enc. Submitted documents

c: Requestor
(w/o enclosures)