



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 16, 2012

Mr. S. Anthony Safi  
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P.O. Box 1977  
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OR2012-10987

Dear Mr. Safi:

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# 458836 (EPISD ORR# 2012.107).

The El Paso Independent School District (the "district"), which you represent, received a request for records pertaining to the requestor. You state you are releasing some information to the requestor. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the submitted information contains the requestor's fingerprints. Section 560.003 provides that "[a] biometric identifier in the possession of a governmental body is exempt from disclosure under [the Act]." Gov't Code § 560.003. Section 560.002 provides, however, that "[a] governmental body that possesses a biometric identifier of an individual . . . may not sell, lease, or otherwise disclose the biometric identifier to another person unless . . . the individual consents to the disclosure[.]" *Id.* § 560.002(1)(A). Thus, section 560.002(1)(A) gives an individual or his authorized representative a right of access to his own fingerprint information. Accordingly, the requestor has a right of access to his own fingerprints under section 560.002(1)(A). Although you assert this information is excepted from disclosure under section 552.108 of the Government Code, statutes governing the release of specific information prevail over the general exceptions to disclosure found in the Act. *See* Attorney General Opinion DM-146 at 3 (1992); *see also* Open Records

Decision Nos. 613 at 4 (1993) (exceptions to Act cannot impinge on statutory right of access to information), 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under the Act). Therefore, the district must release the requestor's fingerprints to him pursuant to section 560.002.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that did not result in a conviction or deferred adjudication. *See* Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that concluded in a final result other than conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state the information at issue, which we have marked, pertains to a criminal investigation that did not result in conviction or deferred adjudication. Based on your representations and our review, we find section 552.108(a)(2) is applicable to the information at issue.

However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). *See* Open Records Decision No. 127 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Thus, with the exception of basic information, which must be released, the district may withhold the marked information under section 552.108(a)(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 Code § 552.101. Section 552.101 encompasses information protected by other statutes, such as section 730.004 of the Transportation Code, which provides, “[n]otwithstanding any other provision of law to the contrary, including chapter 552, Government Code, except as provided by Sections 730.005–730.007, an agency may not disclose personal information about any person obtained by the agency in connection with a motor vehicle record.” Transp. Code § 730.004. Section 730.004 applies only to an “agency” that compiles or maintains motor vehicle records. *See id.* § 730.003(1). You have not established the district compiles or maintains motor vehicle records; therefore, chapter 730 does not apply to the district. Accordingly, the district may not withhold any portion of the remaining information under section 552.101 of the Government Code in conjunction with chapter 730 of the Transportation Code. *See* Open Records Decision No. 478 at 2 (1987) (language of confidentiality statute controls scope of protection).

Section 552.101 of the Government Code also encompasses criminal history record information (“CHRI”) protected by chapter 411 of the Government Code.<sup>1</sup> Chapter 411 authorizes the Texas Department of Public Safety (“DPS”) to compile and maintain 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 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:

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<sup>1</sup>Although you assert release of the information at issue is prohibited by section 411.085 of the Government Code, that provision provides the penalties for the “Unauthorized Obtaining, Use, or Disclosure of Criminal History Record Information.” Gov’t Code § 411.085.

(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 assert a portion of the remaining information was obtained from DPS in accordance with chapter 22 of the Education Code. Based on your representations and our review, we conclude the information at issue 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 id.* § 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 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). Accordingly, the information we have marked must be released to this requestor.

Section 552.130 of the Government Code provides that information related to a motor vehicle operator's license or driver's license issued by a Texas agency, or an agency of another state or country, is excepted from public release. Gov't Code § 552.130(a)(1). Upon review, we find portions of the remaining information consist of motor vehicle record information. However, we note section 552.130 protects personal privacy. Accordingly, the requestor has a right of access to his motor vehicle record information under section 552.023 of the Government Code and it may not be withheld under section 552.130. *See id.* § 552.023(a) (governmental body may not deny access to person to whom information relates

or person's agent on ground that information is considered confidential by privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves).

In summary, the district must release the requestor's fingerprints to him pursuant to section 560.002 of the Government Code. With the exception of basic information, which must be released, the district may withhold the information we have marked under section 552.108(a)(2) of the Government Code. The district must release the remaining information.<sup>2</sup>

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](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/bhf

Ref: ID# 458836

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>2</sup>We note because the requestor has a special right of access to some of the information being released 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.