



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 6, 2012

Mr. Chris Pirtle
For McLean Independent School District
Underwood Attorneys at Law
P.O. Box 9158
Amarillo, Texas 79105-9158

OR2012-19692

Dear Mr. Pirtle:

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# 472923.

The McLean Independent School District (the "district"), which you represent, received a request for a complete copy of the personnel file of the requestor's client, including information pertaining to complaints and grievances filed against her. You state some of the information has been released. You claim the submitted information is excepted from disclosure under sections 552.101, 552.102, and 552.116 of the Government Code. We have considered the exceptions 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 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 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 further provides:

(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)(1)–(2). Upon review, we agree the information submitted as Exhibit B consists of confidential CHRI. The district must withhold this information under section 552.101 of the Government Code in conjunction with section 411.097(d) of the Government Code.¹

Section 552.116 of the Government Code provides:

(a) An audit, working paper of an audit of the state auditor or the auditor of a state agency, an institution of higher education as defined by Section 61.003, Education Code, a county, a municipality, a school district, a hospital district, or a joint board operating under Section 22.074, Transportation Code, including any audit relating to the criminal history background check of a public school employee, is excepted from [required public disclosure]. If information in an audit working paper is also maintained in another record, that other record is not excepted from [public disclosure] by this section.

(b) In this section:

(1) “Audit” means an audit authorized or required by a statute of this state or the United States, the charter or an ordinance of a municipality, an order of the commissioners court of a county, the bylaws adopted by or other action of the governing board of a hospital district, a resolution or other action of a board of trustees of a school district, including an audit by the district relating to the criminal history background check of a public school employee, or a resolution or other action of a joint board described by Subsection (a) and includes an investigation.

(2) “Audit working paper” includes all information, documentary or otherwise, prepared or maintained in conducting an audit or preparing an audit report, including:

(A) intra-agency and interagency communications; and

(B) drafts of the audit report or portions of those drafts.

¹As our ruling is dispositive, we do not address your remaining argument against disclosure of this information.

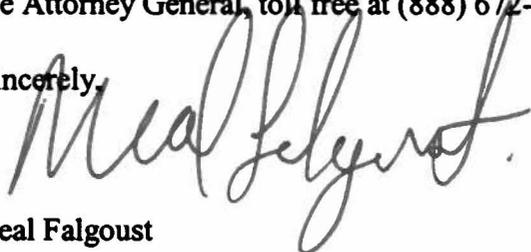
Id. § 552.116(a), (b)(1)–(2). You state the information submitted as Exhibit C is the draft report of an audit conducted by the DPS. We note, however, section 552.116 is intended to protect the auditor's interests. In this instance, you inform us the audit was conducted by the DPS pursuant to federal and state law. The information at issue is maintained by the district, who we understand is the auditee. As the auditee, the district cannot assert section 552.116 in order to protect its own interest in withholding the information. Thus, section 552.116 is not applicable, and the district may not withhold any of the information submitted as Exhibit C under section 552.116 of the Government Code.

In summary, the district must withhold Exhibit B under section 552.101 of the Government Code in conjunction with section 411.097 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,



Neal Falgoust
Assistant Attorney General
Open Records Division

NF/ag

Ref: ID# 472923

Enc. Submitted documents

c: Requestor
(w/o enclosures)