



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 28, 2013

Ms. Sandi Pearson Tarski
Counsel for the Alvarado Independent School District
Walsh, Anderson, Gallegos, Green and Treviño, P.C.
P.O. Box 168046
Irving, Texas 75016

OR2013-15016

Dear Ms. Tarski:

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# 497882.

The Alvarado Independent School District (the "district"), which you represent, received a request for four categories of information related to a named individual, excluding his date of birth, grades earned, grade point averages, performance evaluations, and personal illness and healthcare information.¹ You inform us the district is providing most of the information responsive to categories two, three, and four of the request to the requestor. You also inform us the district does not have any documents responsive to category one of the request.² You claim the submitted information is excepted from disclosure under section 552.101 of the

¹You inform us the district sought and received clarification of the request. *See* Gov't Code § 552.222(b) (providing that if request for information is unclear, governmental body may ask requestor to clarify request); *see also* *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when governmental entity, acting in good faith, requests clarification or narrowing of unclear or overbroad request for public information, ten-day period to request attorney general ruling is measured from date request is clarified or narrowed).

²The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990), 452 at 3 (1986), 362 at 2 (1983).

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. This section encompasses criminal history record information (“CHRI”). Chapter 411 authorizes the Texas Department of Public Safety (the “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.

In 2007, the Legislature enacted section 411.0845 of the Government Code, which provides in relevant part:

(a) The [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, the [DPS] shall provide through the electronic clearinghouse:

(1) [CHRI] reported to the [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 the [DPS] or the Federal Bureau of Investigation.

...

(d) The [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 that “[a] school district . . . is entitled to obtain from the [DPS CHRI] maintained by the [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). Pursuant to section 22.083(a-1) of the Education Code, a school district is authorized to

obtain CHRI from the DPS's electronic clearinghouse. *See* Educ. Code § 22.083(a-1)(1). Section 22.08391(d) of the Education Code states that any CHRI received by a school district is subject to section 411.097(d) of the Government Code. *Id.* § 22.08391(d). Section 411.097(d) provides in relevant part:

(d) [CHRI] obtained by a school district, charter school, private school, service center, commercial transportation company, or shared services arrangement 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

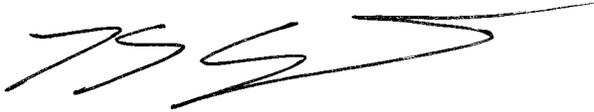
(E) by court order[.]

Gov't Code § 411.097(d)(1). You assert the submitted information consists of CHRI obtained by the district from the DPS's electronic clearinghouse. You inform us this information was obtained by the district from both the employee at issue and from the DPS pursuant to chapter 22 of the Education Code. Upon review, we agree a portion of the information at issue, which we have marked, consist of CHRI obtained by the district from the DPS's electronic clearinghouse. Therefore, the information we have marked must be withheld under section 552.101 of the Government Code in conjunction with sections 411.0845 and 411.097(d) of the Government Code. However, the remaining information is related to an incident that was self-reported by the employee involved, and we find you have not demonstrated how information that was self-reported is obtained from the DPS's electronic clearinghouse. Accordingly, the remaining information does not constitute CHRI and it may not be withheld under section 552.101 in conjunction with chapter 411 of the Government Code. As no further exceptions to disclosure are raised for the remaining information, the district must release it.

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read 'KLC', with a long horizontal flourish extending to the right.

Kenneth Leland Conyer
Assistant Attorney General
Open Records Division

KLC/bhf

Ref: ID# 497882

Enc. Submitted documents

c: Requestor
(w/o enclosures)