



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 3, 2013

Mr. W. Montgomery Meitler  
Senior Counsel  
Texas Education Agency  
1701 North Congress Avenue  
Austin, Texas 78701-1494

OR2013-20880

Dear Mr. Meitler:

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# 507379 (TEA PIR#s 20525 and 20527).

The Texas Education Agency (the "agency") received two requests from the same requestor for (1) exhibits and attachments to a specified report and (2) all records submitted by the agency and a named school and recordings pertaining to a specified hearing regarding the suspension of operations and funding of the named school. You state the agency will release some of the responsive information to the requestor. You also state the agency will redact information pursuant to the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code,<sup>1</sup> section 552.130 of the Government

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<sup>1</sup>The United States Department of Education Family Policy Compliance Office (the "DOE") has informed this office FERPA does not permit state and local educational authorities to disclose to this office, without parental or an adult student's consent, unredacted, personally identifiable information contained in education records for the purpose of our review in the open records ruling process under the Act. The DOE has determined FERPA determinations must be made by the educational authority in possession of the educational records. We have posted a copy of the letter from the DOE on the Attorney General's website at <http://www.oag.state.tx.us/open/20060725usdoe.pdf>.

Code,<sup>2</sup> and section 552.147 of the Government Code.<sup>3</sup> You claim that 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 representative sample of information.<sup>4</sup>

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 chapter 411 of the Government Code which pertains to criminal history record information (“CHRI”). Chapter 411 of the Government Code 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 id.* §§ 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) the [CHRI] reported to the [DPS] or the Federal Bureau of Investigation relating to the individual who is the subject of the request; or

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<sup>2</sup>We note section 552.130(c) of the Government Code allows a governmental body to redact the information described in subsection 552.130(a) without the necessity of seeking a decision from the attorney general. *See* Gov’t Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e).

<sup>3</sup>We note section 552.147(b) of the Government Code authorizes a governmental body to redact a living person’s social security number from public release without the necessity of requesting a decision from this office. *See* Gov’t Code § 552.147(b).

<sup>4</sup>We assume the “representative sample” of information 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.

(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, “[a] charter school . . . is entitled to obtain from the [DPS CHRI] maintained by the [DPS] that the school . . . is required or authorized to obtain under Subchapter C, Chapter 22, Education Code, that relates to a[n] . . . employee of the school[.]” *Id.* § 411.097(b). Pursuant to section 22.083(a-1) of the Education Code, an open-enrollment charter school 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 charter school is subject to section 411.097(d) of the Government Code. *Id.* § 22.08391(d). Section 411.097(d) provides, in part, that “[CHRI] obtained by a . . . charter school . . . in the original form or any subsequent form . . . may not be released to any person except . . . the [agency.]” Gov’t Code § 411.097(d)(1)(B). You state the information you have marked consists of CHRI obtained from the DPS criminal history clearinghouse by a charter school pursuant to section 411.097. You further state the agency received this information from the school pursuant to section 411.097(d). Based on your representations and our review, we find the agency must withhold the information you have marked under section 552.101 of the Government Code in conjunction with sections 411.0845 and 411.097(d) of the Government Code.

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.

*Id.* § 552.116. You state the information you have marked consists of “audit working papers prepared or maintained by [the agency’s] Division of Special Investigations in conjunction with an audit of [a named school].” We understand the investigations were authorized by section 39.057(a)(14) of the Education Code, which permits special accreditation investigations to be conducted as the commissioner of education determines necessary. *See* Educ. Code § 39.057 (listing circumstances in which the commissioner of education shall authorize investigations, including as the commissioner determines necessary). Based on your representations and our review, we agree the information at issue constitutes audit working papers under section 552.116. Thus, the agency may withhold the information you have marked under section 552.116 of the Government Code.<sup>5</sup>

Section 552.102(a) of the Government Code excepts from disclosure “information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.” Gov’t Code § 552.102(a). The Texas Supreme Court held section 552.102(a) excepts from disclosure the dates of birth of state employees in the payroll database of the Texas Comptroller of Public Accounts. *Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex.*, 354 S.W.3d 336 (Tex. 2010). Accordingly, section 552.102(a) applies only to a public employee’s birth date maintained by the employer in an employment context. In this instance, the birth dates at issue are not held by the agency in an employment context. Therefore, we conclude the agency may not withhold the birth dates in the remaining information under section 552.102(a) of the Government Code.

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<sup>5</sup>As our ruling is dispositive of this information, we need not address your remaining argument against its disclosure.

In summary, the agency must withhold the information you have marked under section 552.101 of the Government Code in conjunction with sections 411.0845 and 411.097(d) of the Government Code. The agency may withhold the information you have marked under section 552.116 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.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](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 'Sarah Casterline', with a long horizontal flourish extending to the right.

Sarah Casterline  
Assistant Attorney General  
Open Records Division

SEC/tch

Ref: ID# 507379

Enc. Submitted documents

c: Requestor  
(w/o enclosures)