



KEN PAXTON  
ATTORNEY GENERAL OF TEXAS

November 1, 2016

Ms. Sarah S. Flournoy  
School Attorney  
Irving Independent School District  
P.O. Box 152637  
Irving, Texas 75015-2637

OR2016-24280

Dear Ms. Flournoy:

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# 632753.

The Irving Independent School District (the "district") received a request for information related to applicants for employment during a specified time period and criminal background information related to district employees. You claim the submitted 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.<sup>1</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 section encompasses section 22.08391(a) of the Education Code. Subchapter C of chapter 22 of the Education Code addresses criminal history records of school district employees and volunteers. Section 22.08391 provides, in part:

(a) Information collected about a person to comply with this subchapter, including the person's name, address, phone number, social security number, driver's license number, other identification number, and fingerprint records:

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

(1) may not be released except:

(A) to comply with this subchapter;

(B) by court order; or

(C) with the consent of the person who is the subject of the information;

(2) is not subject to disclosure as provided by [the Act]; and

(3) shall be destroyed by the requestor or any subsequent holder of the information not later than the first anniversary of the date the information is received.

Educ. Code § 22.08391(a). Thus, except in specified circumstances, section 22.08391 prohibits the release of information about a person collected to conduct a criminal history record search. We understand you to claim the information at issue was collected in order for the district to comply with its obligations under Subchapter C of Chapter 22 of the Education Code. Upon review, we find some of the information at issue, which we have marked, consists of a person's name and other information that was collected to conduct a criminal history record search under Chapter 22. Accordingly, the district must withhold the information we marked under section 552.101 in conjunction with section 22.08391. However, we find you have not demonstrated any of the remaining information at issue consists of information about a person collected to conduct a criminal record search. Accordingly, the district may not withhold any of the remaining information at issue under section 552.101 in conjunction with section 22.08391.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. The doctrine of common-law privacy protects a compilation of an individual's criminal history, which is highly embarrassing information, the publication of which would be highly objectionable to a reasonable person. *Cf. United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (when considering prong regarding individual's privacy interest, court recognized distinction between public records found in courthouse files and local police stations and compiled summary of information and noted individual has significant privacy interest in compilation of one's criminal history). Furthermore, we find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. Upon review, we find you have not demonstrated any of the remaining information is highly intimate or embarrassing, or the

information is of legitimate public concern. Thus, the district may not withhold any portion of the remaining information under section 552.101 in conjunction with common-law privacy.

In summary, the district must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 22.08391 of the Education Code. The district must release the remaining information.

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,



Claire V. Morris Sloan  
Assistant Attorney General  
Open Records Division

CVMS/som

Ref: ID# 632753

Enc. Submitted documents

c: Requestor  
(w/o enclosures)