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ATTORNEY GENERAL OF TEXAS

May 23, 2019

Ms. Katheryne Ellison
Assistant General Counsel
Houston Independent School District
4400 West 18th Street
Houston, Texas 77092-8501

OR2019-13762

Dear Ms. Ellison:

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# 767298 (Ref. No. W022619B).

The Houston Independent School District (the "district") received a request for the personnel file of a named district employee. You claim portions of the submitted information are excepted from disclosure under sections 552.101, 552.102, 552.117, 552.1175, 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 includes a peace officer's Texas Commission on Law Enforcement ("TCOLE") identification number. Section 552.002(a) of the Government Code defines "public information" as the following:

[I]nformation that is written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

- (1) by a governmental body;
- (2) for a governmental body and the governmental body:

(A) owns the information;

(B) has a right of access to the information; or

(C) spends or contributes public money for the purpose of writing, producing, collecting, assembling, or maintaining the information; or

(3) by an individual officer or employee of a governmental body in the officer's or employee's official capacity and the information pertains to official business of the governmental body.

Gov't Code § 552.002(a). In Open Records Decision No. 581 (1990), this office determined certain computer information, such as source codes, documentation information, and other computer programming, that has no significance other than its use as a tool for the maintenance, manipulation, or protection of public property is not the kind of information made public under section 552.021 of the Government Code. We understand an officer's TCOLE identification number is a unique computer-generated number assigned to peace officers for identification in TCOLE's electronic database, and may be used as an access device number on the TCOLE website. Accordingly, we find the officer's TCOLE identification number in the submitted information does not constitute public information under section 552.002 of the Government Code. Therefore, the TCOLE identification number is not subject to the Act and the district need not release it.

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 chapter 411 of the Government Code, which pertains to criminal history record information ("CHRI"). 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 of the Government Code provides, in pertinent 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 ["FBI"] 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 [FBI].

...

(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:

[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). We understand some of the remaining information consists of CHRI that was obtained through the DPS criminal history clearinghouse. We have no

indication the requestor is an individual authorized to receive the information at issue pursuant to section 411.097(d)(1). Accordingly, the district must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 411.0845 of the Government Code.¹

Section 552.101 of the Government Code also encompasses section 411.192 of the Government Code, which governs the release of information maintained by DPS concerning the licensure of an individual to carry a handgun. Section 411.192 provides, in relevant part:

(a) [DPS] shall disclose to a criminal justice agency information contained in its files and records regarding whether a named individual or any individual named in a specified list is licensed under this subchapter. Information on an individual subject to disclosure under this section includes the individual's name, date of birth, gender, race, zip code, telephone number, e-mail address, and Internet website address. Except as otherwise provided by this section and by Section 411.193, all other records maintained under this subchapter are confidential and are not subject to mandatory disclosure under the [Act].

(b) An applicant or license holder may be furnished a copy of disclosable records regarding the applicant or license holder on request and the payment of a reasonable fee.

Id. § 411.192(a)-(b). The remaining information contains handgun license information obtained from DPS. In this instance, the requestor is not the license holder. Accordingly, the district must withhold the handgun license information we marked under section 552.101 of the Government Code in conjunction with section 411.192 of the Government Code.

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.” *Id.* § 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, the district must withhold the employee's date of birth we marked under section 552.102(a) of the Government Code.

Section 552.102(b) of the Government Code excepts from public disclosure “a transcript from an institution of higher education maintained in the personnel file of a professional public school employee[.]” Gov't Code § 552.102(b). We must consider whether the Legislature intended the term “professional public school employee” in section 552.102(b)

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

to include a police officer employed by the district. Section 552.102(b) does not define “professional public school employee.” When construing a statute, a court may consider the circumstances under which the Legislature enacted the statute as well as its legislative history. *Id.* § 311.023(2), (3); *City of Rockwall v. Hughes*, 246 S.W.3d 621, 626 n.6 (Tex. 2008). In 1989, the Legislature passed Senate Bill 404 (“S.B. 404”) as an amendment to the Act to include the statutory predecessor to section 552.102(b). The Senate sponsor of S.B. 404, Senator Don Henderson, stated before the Senate Committee for State Affairs the bill was a response to “people trying to get past a teacher’s degree, past a teacher’s hiring, . . . [and] past a school board’s determination that a teacher was qualified to teach[.]” Hearing on S.B. 404 Before the Senate Comm. for State Affairs, 71st Leg., R.S. (February 27, 1989) (statement of Senator Henderson) (recording available from Senate Staff Services Office). During the Senate floor debate of the bill, Senator Henderson further questioned the purpose of “any citizen being able to look at any teacher’s transcript” because “there are several other means by which we say teachers are qualified to teach in this state.” *Id.*; *see also* Debate on Tex. S.B. 404 on the Floor of the Senate, 71st Leg., R.S. (March 13, 1989) (statement of Senator Henderson describing S.B. 404 as relating to privacy of a teacher’s transcript; statement of Senator Caperton summarizing S.B. 404 as balancing public’s right to know with teacher’s right of privacy) (recording available from Senate Staff Services Office). In addition, Representative Paul J. Hilbert, the House sponsor of S.B. 404, stated during the debate on the House floor that the statute was intended to protect teachers’ college transcripts. *See* Debate on Tex. S.B. 404 on the Floor of the House, 71st Leg., R.S. (May 10 and 11, 1989) (statements of Representative Hilbert introducing S.B. 404 as applying to transcripts of teachers) (recording available from House Video/Audio Services). Therefore, we believe the legislative history of section 552.102(b) shows the Legislature enacted the predecessor statute to section 552.102(b) to protect the transcripts of only professional educators, rather than the transcripts of all public school employees. *See* Open Records Decision No. 526 (1989) (addressing predecessor statute in light of previous lack of exception for “qualifications of professional public school employees to teach”) (emphasis added). We find the district has not established the district employee at issue is an educator for purposes of section 552.102(b) of the Government Code. Thus, section 552.102(b) is not applicable to this district employee’s transcripts. Therefore, the district may not withhold the submitted transcripts under section 552.102(b) of the Government Code. *See* Open Records Decision Nos. 470 (1987), 467 (1987) (public has legitimate interest in job qualifications, including college transcripts, of public employees).

Section 552.117(a)(1) of the Government Code excepts from disclosure the home address and telephone number, emergency contact information, social security number, and family member information of a current or former employee or official of a governmental body who requests this information be kept confidential under section 552.024 of the Government Code, except as provided by section 552.024(a-1). *See* Gov’t Code § 552.117(a)(1), .024. Section 552.024(a-1) of the Government Code provides, a “school district may not require an employee or former employee of the district to choose whether to allow public access to the employee’s or former employee’s social security number.” *Id.* § 552.024(a-1). Thus, the

district may only withhold under section 552.117 the home address and telephone number, emergency contact information, and family member information of a current or former employee or official of the district who requests this information be kept confidential under section 552.024. We note section 552.117(a)(1) also applies to the personal cellular telephone number of a current or former official or employee of a governmental body, provided the cellular telephone service is not paid by a governmental body. *See* Open Records Decision No. 506 at 5-6 (1988). Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body's receipt of the request for the information. *See* Open Records Decision No. 530 at 5 (1989). Thus, information may be withheld under section 552.117(a)(1) only on behalf of a current or former employee or official who made a request for confidentiality under section 552.024 prior to the date of the governmental body's receipt of the request for the information. We note you have submitted documentation showing the employee at issue has elected to keep the information at issue confidential. Accordingly, the district must withhold the information we marked under section 552.117(a)(1) of the Government Code; however, the district may only withhold the marked cellular telephone number if the cellular service is not paid for by a governmental body.

Section 552.1175 of the Government Code protects the home address, home telephone number, emergency contact information, date of birth, social security number, and family member information of certain individuals, when that information is held by a governmental body in a non-employment capacity and the individual elects to keep the information confidential. *See* Gov't Code § 552.1175. Section 552.1175 applies, in part, to "peace officers as defined by Article 2.12, Code of Criminal Procedure[.]" *Id.* § 552.1175(a)(1). Section 552.1175 also encompasses a personal cellular telephone number, unless the cellular telephone service is paid for by a governmental body. *See* ORD 506 at 5-7. Accordingly, to the extent the cellular telephone numbers we marked pertain to peace officers who elect to restrict access to their information in accordance with section 552.1175(b) and the cellular service is not paid for by a governmental body, the district must withhold the information we marked under section 552.1175 of the Government Code. Conversely, to the extent a cellular telephone number we marked does not pertain to a peace officer who elects to restrict access to his information in accordance with section 552.1175(b) or the cellular service is paid for by a governmental body, the district may not withhold such information under section 552.1175 of the Government Code.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release. *See* Gov't Code § 552.130. Accordingly, the district must withhold the motor vehicle record information we marked under section 552.130 of the Government Code.

Section 552.137 of the Government Code excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection 552.137(c).² *Id.* § 552.137(a)-(c). The e-mail address at issue is not a type specifically excluded by section 552.137(c) of the Government Code. Accordingly, the district must withhold the e-mail address we marked under section 552.137 of the Government Code, unless the owner of the e-mail address affirmatively consents to its disclosure.

Section 552.147(a-1) of the Government Code provides, “[t]he social security number of an employee of a school district in the custody of the district is confidential.” *Id.* § 552.147(a-1). Thus, section 552.147(a-1) makes the social security numbers of school district employees confidential, without such employees being required to first make a confidentiality election under section 552.024 of the Government Code. *Id.* § 552.024(a-1) (school district may not require employee or former employee of district to choose whether to allow public access to employee’s or former employee’s social security number). Reading sections 552.024(a-1) and 552.147(a-1) together, we conclude section 552.147(a-1) makes confidential the social security numbers of both current and former school district employees. Accordingly, the district must withhold the social security number we marked under section 552.147(a-1) of the Government Code.

In summary, the officer’s TCOLE identification number is not subject to the Act and the district need not release it. The district must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 411.0845 of the Government Code. The district must withhold the handgun license information we marked under section 552.101 of the Government Code in conjunction with section 411.192 of the Government Code. The district must withhold the employee’s date of birth we marked under section 552.102(a) of the Government Code. The district must withhold the information we marked under section 552.117(a)(1) of the Government Code; however, the district may only withhold the marked cellular telephone number if the cellular service is not paid for by a governmental body. To the extent the cellular telephone numbers we marked pertain to peace officers who elect to restrict access to their information in accordance with section 552.1175(b) and the cellular service is not paid for by a governmental body, the district must withhold the information we marked under section 552.1175 of the Government Code. The district must withhold the motor vehicle record information we marked under section 552.130 of the Government Code. The district must withhold the e-mail address we marked under section 552.137 of the Government Code, unless the owner of the e-mail address affirmatively consents to its disclosure. The district must withhold the social security

²The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

number we marked under section 552.147(a-1) of the Government 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, 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,



Blake Brennan
Attorney
Open Records Division

BB/mo

Ref: ID# 767298

Enc. Submitted documents

c: Requestor
(w/o enclosures)