



February 6, 2001

Mr. Mike Atkins
McMahon, Tidwell, Hansen, Atkins & Peacock, P.C.
4001 East 42nd, Suite 200
Odessa, Texas 79762

OR2001-0466

Dear Mr. Atkins:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 143944.

The Ector County Independent School District (the "district"), which you represent, received a written request for the personnel files of two named district employees. You state that the district has released much of the requested information. You contend, however, that certain other documents are excepted from required public disclosure.

Before we address the applicability of the exceptions you raised, we must first address a procedural matter. Section 552.301 of the Government Code dictates the procedure that a governmental body must follow when it seeks a decision from the attorney general as to whether requested information falls within an exception to disclosure. Among other requirements, the governmental body must submit to this office "a copy of the written request for information." Gov't Code § 552.301(e)(1)(B). Otherwise, the requested information "is presumed to be subject to required public disclosure and must be released unless there is a compelling reason to withhold the information." Gov't Code § 552.302. The request letter received by the district was not among the documents you submitted to this office.

On the other hand, the applicability of the confidentiality provisions that you raise in conjunction with section 552.101 of the Government Code constitutes "compelling" reasons for non-disclosure that overcome the legal presumption that the records are public information. *See* Gov't Code § 552.302; Open Records Decision No. 150 (1977). Accordingly, we will consider the applicability of the confidentiality provisions that you raised.

The documents you submitted under Tab 2 consist of the employees' college transcripts. Section 552.102(b) of the Government Code requires the withholding of

a transcript from an institution of higher education maintained in the personnel file of a professional public school employee, except that this section does not exempt from disclosure the degree obtained or the curriculum on a transcript in the personnel file of the employee.

Accordingly, we conclude that the district may release only those portions of the transcripts that reveal the employee's name, degree obtained, and "courses taken." We agree that all of the information you have marked on the college transcripts must be withheld pursuant to section 552.102(b).

We additionally note that the college transcripts contain the home address of the district employees. Section 552.117(1) of the Government Code requires that the district withhold, among other things, the home address of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024. Accordingly, the district must redact the employees' addresses contained in the transcripts, but only if the respective employee had elected to keep this information confidential in accordance with section 552.024 of the Government Code prior to the district's receipt of the current records request. *See* Open Records Decision No. 530 (1989).

The documents you submitted under Tab 4 consist of performance evaluations of the two employees. Section 21.355 of the Education Code provides that "[a]ny document evaluating the performance of a teacher or administrator is confidential." This office has interpreted this section to apply to any document that evaluates, as that term is commonly understood, the performance of a teacher or administrator. Open Records Decision No. 643 (1996). In that opinion, this office also concluded that a teacher is someone who is required to hold and does hold a certificate or permit required under chapter 21 of the Education Code and is teaching at the time of his or her evaluation. *Id.* at 4. Assuming the individuals in question held such a certificate or permit at the time of the evaluations at issue, we conclude that the performance evaluations must be withheld from the public in their entirety pursuant to section 21.355 of the Education Code.

However, one of the documents submitted under Tab 4 is not a performance evaluation, but rather notes from an "employee conference." Consequently, this record is not made confidential under section 21.355. Because you have not raise any other exception for this record, we conclude that it must be disclosed.

Finally, the documents you submitted to this office under Tabs 3 and 5 directly pertain to a Child Protective Services investigation of alleged child abuse. Section 261.201(a) of the Family Code provides as follows:

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

See also Fam. Code § 261.406(b) (making section 261.201 applicable to summary reports of CPS investigations supplied to school principal). You have not indicated that the district's police department has adopted a rule that governs the release of this type of information. Therefore, we assume that no such regulation exists. Given that assumption, the requested documents under Tabs 3 and 5 are made confidential pursuant to section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). Accordingly, the district must withhold these documents in their entirety.¹

In summary, the district must withhold 1) the information you have marked contained in the college transcripts pursuant to section 552.102(b) of the Government Code, as well as the employees' home addresses pursuant to section 552.117(1), if applicable, 2) the job performance evaluations pursuant to section 21.355 of the Education Code, and 3) all records pertaining to a child abuse investigation pursuant to section 261.201 of the Family Code. However, the district must release the entire document titled "Employee Conference."

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full

¹Please note, however, that contrary to your assertions, the district police department records submitted under Tab 3 do not consist of "education records" for purposes of the federal Family Educational Rights and Privacy Act of 1974. *See* 20 U.S.C. § 1232g(a)(4)(B)(ii); Open Records Decision No. 612 (1992) (term "education records" does not include records maintained by law enforcement unit of educational agency or institution created by that law enforcement unit for purpose of law enforcement).

benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Kay H. Hastings
Assistant Attorney General
Open Records Division

KHH/RWP/seg

Ref: ID# 143944

Encl. Submitted documents

cc: Mr. Larry Griffin
Odessa American
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(w/o enclosures)