



March 9, 2001

Mr. Joe De Los Santos
Walsh, Anderson, Brown, Schulze & Aldridge, P.C.
P.O. Box 460606
San Antonio, Texas 78246-0606

OR2001-0934

Dear Mr. De Los Santos:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 144869.

The Poteet Independent School District (the "district"), which you represent, received a request for information relating to an employee of the district, including correspondence between the district and the State Board for Educator Certification concerning the employee, the results of any investigations of the employee by the district, and the employee's personnel file. You inform us that the district has released portions of the requested information. You claim, however, that certain information contained in the employee's personnel file is excepted from disclosure under sections 552.101, 552.102, and 552.130 of the Government Code. We have considered the exceptions you raise and have reviewed the information you submitted.

First, we note that the responsive employee evaluations are subject to required public disclosure under section 552.022 of the Government Code. Section 552.022 provides in relevant part:

(a) Without limiting the amount or kind of information that is public information under this chapter, *the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:*

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body[.]

Gov't Code § 552.022(a)(1) (emphasis added). Thus, section 552.022(a)(1) requires the release of completed evaluations unless they are expressly confidential under other law.

You assert that the appraisals and evaluations of the employee are confidential under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This exception thus encompasses information that is made confidential by other statutes. Section 21.355 of the Education Code provides that "[a] document evaluating the performance of a teacher or administrator is confidential." Educ. Code § 21.355. This office has interpreted section 21.355 to apply to any document that evaluates, as that term is commonly understood, the performance of a teacher or an administrator. *See* Open Records Decision No. 643 at 3 (1996). In that same decision, we also determined that the word "teacher," for the purposes of section 21.355, is a person who is required to and does in fact hold a teaching certificate under subchapter B of chapter 21 of the Education Code or a school district teaching permit under section 21.055 and who is engaged in the process of teaching, as that term is commonly defined, at the time of the evaluation. *See* ORD 643 at 4. We have carefully reviewed the records that you claim are confidential teacher evaluations. Based on our review of those records, and your indication that they pertain to a teacher, we conclude that they are confidential under section 21.355 of the Education Code. Therefore, the district must withhold the evaluations, which we have marked, under section 552.101 of the Government Code.

You also assert that responsive medical records and information are confidential under section 552.101 in conjunction with the Medical Practice Act (the "MPA"), as codified at subtitle B of title 3 of the Occupations Code. *See* Occ. Code § 151.001. Section 159.002 of the Occupations Code provides in relevant part:

(b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.

(c) A person who receives information from a confidential communication or record as described by this chapter . . . may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

Occ. Code § 159.002(b), (c). The Medical Practice Act includes provisions that govern the disclosure of information that it encompasses. *See* Occ. Code §§ 159.003, .004, .005, .006. This office has determined that in governing access to a specific subset of information, the Medical Practice Act prevails over the more general provisions of chapter 552 of the Government Code.¹ We have marked the responsive records that are governed by the Medical Practice Act. The district must withhold those records unless the MPA permits their release.

¹*See* Open Records Decision No. 598 (1991). The Seventy-sixth Legislature repealed the predecessor statute, article 4495b of Vernon's Texas Civil Statutes, in enacting the Occupations Code. *See* Act of May 13, 1999, 76th Leg., R.S., ch. 388, §§ 6, 7, 1999 Tex. Gen. Laws 1431, 2439-40. The legislation was a non-substantive codification.

You also raise section 552.101 in conjunction with section 1324a of title 8 of the United States Code, which provides that an Employment Eligibility Verification (Form I-9) "may not be used for purposes other than for enforcement of this chapter" and for enforcement of other federal statutes governing crime and criminal investigations. *See* 8 U.S.C. § 1324a(b)(5); *see also* 8 C.F.R. § 274a.2(b)(4). As release of the submitted Form I-9 under chapter 552 of the Government Code would be "for purposes other than for enforcement" of the referenced federal statutes, the Form I-9 is excepted from disclosure under section 552.101 in conjunction with section 1324a of title 8 of the United States Code. It may be released only for purposes of compliance with the federal laws and regulations governing the employment verification system.

You also assert that the district must withhold other responsive information under section 552.101 in conjunction with the federal Fair Credit Reporting Act (the "FCRA"), 15 U.S.C. § 1681 *et seq.* Section 1681b of the FCRA permits a consumer reporting agency to furnish a consumer report to a person that the consumer reporting agency has reason to believe intends to use the information for employment purposes. *See* 15 U.S.C. § 1681(b)(a)(3)(B); *see also id.* § 1681a(b), (d) (defining "person" and "consumer report"). Section 1681b further provides that "[a] person shall not use or obtain a consumer report for any purpose unless . . . the consumer report is obtained for a purpose for which the consumer report is authorized to be furnished under this section; and . . . the purpose is certified in accordance with section 1681e of this title by a prospective user of the report through a general or specific certification." 15 U.S.C. § 1681b(f). Section 1681e provides for the maintenance of procedures by consumer reporting agencies under which prospective users of consumer reports must identify themselves, certify the purposes for which they seek information, and certify that the information will be used for no other purpose. *See* 15 U.S.C. § 1681e(a); *see also* Open Records Decision No. 373 at 2 (1983) (stating that federal law strictly limits distribution of consumer credit reports by credit reporting agencies). You contend that the FCRA does not permit a consumer report to be furnished in response to a request for information under chapter 552 of the Government Code. Upon review of the information in question, we conclude that it must be withheld from the requestor under section 552.101 of the Government Code in conjunction with the FCRA.

You also raise section 552.102(b) of the Government Code, which excepts from disclosure "a transcript from an institution of higher education maintained in the personnel file of a professional public school employee." Section 552.102(b) further provides, however, that "the degree obtained or the curriculum on a transcript in the personnel file of the employee" are not excepted from disclosure. Thus, except for the degree obtained and the courses taken, the district must withhold the responsive college transcript under section 552.102(b).

The district may be required to withhold the employee's social security number under section 552.117 of the Government Code. Section 552.117(1) excepts from disclosure the home address, home telephone number, and social security number of a present or former government employee, as well as information revealing whether the employee has family members, *if the present or former employee requested that the information be kept confidential in accordance with section 552.024.* *See* Open Records Decision Nos. 622 (1994), 455 (1987). However, this information may not be withheld in the case of a present

or former employee who made the request for confidentiality under section 552.024 after the request for information was made. Whether a particular item of information is public must be determined at the time the request for it is made. Open Records Decision No. 530 at 5 (1989). Thus, the district must withhold any information that is excepted from disclosure under section 552.117(1) if the former employee properly elected under section 552.024 not to permit public access to that information. *Id.*

A social security number also may be confidential under section 552.101 of the Government Code in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), *if the social security number was obtained or is maintained by a governmental body pursuant to any provision of law enacted on or after October 1, 1990.* See Open Records Decision No. 622 at 2-4 (1994). It is not apparent to this office that the social security number in the submitted records is confidential under section 405(c)(2)(C)(viii)(I) of the federal law. You have cited no law, nor are we aware of any law enacted on or after October 1, 1990, that authorizes the district to obtain or maintain a social security number. Therefore, we have no basis for concluding that the social security number in question was obtained or is maintained pursuant to such a statute and is therefore confidential under the federal law. We caution you, however, that chapter 552 of the Government Code imposes criminal penalties for the release of confidential information. See Gov't Code §§ 552.007, .352. Therefore, prior to releasing the social security number, the district should ensure that it was not obtained and is not maintained pursuant to any provision of law enacted on or after October 1, 1990.

Lastly, we address your claim under section 552.130 of the Government Code, which governs motor vehicle record information. Section 552.130 provides in relevant part that “[i]nformation is excepted from [required public disclosure] if the information relates to . . . a motor vehicle operator’s or driver’s license or permit issued by an agency of this state[.]” Gov’t Code § 552.130(a)(1). We have marked the information that the district must withhold under section 552.130.

In summary, the district must withhold portions of the submitted information under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code, section 1324a of title 8 of the United States Code, and section 1681b of title 15 of the United States Code. Responsive medical records must not be released unless permitted by the Medical Practice Act. The district also must withhold the submitted college transcript, except for the degree obtained and the courses taken, under section 552.102(b). The district may be required to withhold the employee’s social security number under sections 552.024 and 552.117(1) of the Government Code. A social security number also may be confidential under section 552.101 in conjunction with federal law. Information relating to motor vehicle records must be withheld under section 552.130.

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 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).

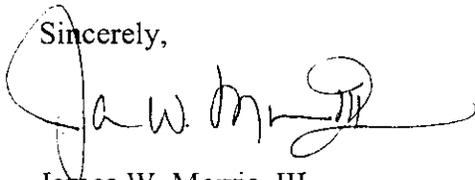
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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,

A handwritten signature in black ink, appearing to read "James W. Morris, III". The signature is fluid and cursive, with a large initial "J" and "M".

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/er

Ref: ID# 144869

Encl: Marked documents

cc: Mr. Danny Robbins
Houston Chronicle
801 Texas Avenue
Houston, Texas 77002
(w/o enclosures)