



September 13, 2001

Mr. Therold I. Farmer
Walsh, Anderson, Brown, Schulze & Aldridge, PC
P.O. Box 2156
Austin, Texas 78752

OR2001-4098

Dear Mr. Farmer:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 151943.

The Leander Independent School District (the "district"), which you represent, received a written request for the personnel file of a teacher at Faubion Elementary School. You state that the district has released to the requestor most of the requested documents with certain redactions. You contend that the remaining requested information is excepted from required public disclosure pursuant to sections 552.026, 552.101, 552.102, and 552.117 of the Government Code.

You have submitted to this office as responsive to the request two sets of documents that you have labeled "Group One" and "Group Two." You first contend that the Group One documents are excepted from public disclosure pursuant to section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code. Section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, *statutory*, or by judicial decision." (Emphasis added.) 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. However, we also conclude that several of the

documents in Group One do not contain information that "evaluates" the performance of the teacher and thus are not made confidential under section 21.355; we have marked those documents accordingly.

You also contend that some information contained in Group One must be withheld from the public pursuant to the Family Educational Rights and Privacy Act of 1974 ("FERPA"), 20 U.S.C. § 1232g. In this regard, section 552.026 of the Government Code provides as follows:

This chapter does not require the release of information contained in education records of an educational agency or institution, except in conformity with [FERPA].

FERPA provides that no federal funds will be made available under any applicable program to an educational agency or institution that releases personally identifiable information, other than directory information, contained in a student's education records to anyone but certain enumerated federal, state, and local officials and institutions, unless otherwise authorized by the student. *See* 20 U.S.C. § 1232g(d). "Education records" are those records that contain information directly related to a student and are maintained by an educational agency or institution or by a person acting for such agency or institution. *Id.* § 1232g(a)(4)(A). Information must be withheld from required public disclosure under FERPA only to the extent "reasonable and necessary to avoid personally identifying a particular student." Open Records Decision Nos. 332 (1982), 206 (1978). We have marked some information contained in Group One that the district must withhold under FERPA. However, the district must also withhold any other information in Group One that would tend to identify particular students.

You also submitted to this office the teacher's Employment Eligibility Verification, Form I-9. Form I-9 is governed by title 8, section 1324a of the United States Code, which provides that the form "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. 8 U.S.C. § 1324a(b)(5). Release of this document under the Public Information Act would be "for purposes other than for enforcement" of the referenced federal statutes. Accordingly, we conclude that Form I-9 is confidential for purposes of section 552.101 of the Government Code and may only be released in compliance with the federal laws and regulations governing the employment verification system.

You next contend that the information contained in Group Two is excepted from public disclosure pursuant to section 552.102(a) of the Government Code. Section 552.102(a) excepts from public disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Section 552.102(a) is designed to protect public employees' personal privacy. The scope of section 552.102(a) protection, however, is very narrow. *See* Open Records Decision No. 336 (1982); *see also*

Attorney General Opinion JM-36 (1983). The test for section 552.102(a) protection is the same as that for information protected by common law privacy under section 552.101: the information must contain highly intimate or embarrassing facts about a person's *private* affairs such that its release would be highly objectionable to a reasonable person *and* the information must be of no legitimate concern to the public. *Hubert v. Harte-Hanks Texas Newspapers, Inc.*, 652 S.W.2d 546, 550 (Tex. App. - Austin 1983, writ ref'd n.r.e.).

Information regarding a financial transaction between an individual and a governmental body is a matter of legitimate public interest; thus, the doctrine of common law privacy does not generally protect from required public disclosure information regarding such a transaction. *See* Open Records Decision Nos. 590 at 3 (1991), 523 at 3-4 (1989). However, a public employee's decision whether to participate in a voluntary investment program or deferred compensation plan that his or her employer offers (but does not fund) does not reflect a financial transaction between the individual and the governmental body; consequently, information regarding such participation is considered intimate and of no legitimate public interest. *See* Open Records Decision No. 545 at 3-5 (1990). Additionally, some of the records at issue reveal the employee's designation of a beneficiary, which also reflects a personal financial decision that is protected by common law privacy. *See* Open Records Decision No. 600 at 11 (1992). We have marked the documents in Groups One and Two to reflect the information the district must withhold pursuant to common law privacy.

Section 552.117(1) of the Government Code requires that the district withhold the home address, home telephone number, social security number, and family information of current or former district employees who request that this information be kept confidential under section 552.024 of the Government Code. You have provided evidence to this office that the teacher elected under section 552.024 not to allow public access to his information prior to the district's receipt of the current records request. Accordingly, the district must redact this information contained in the documents that are otherwise subject to release. *See* Open Records Decision No. 530 at 5 (1989) (whether particular information is protected by section 552.117(1) must be determined at time request for it is made).

Finally, some of the documents at issue contain a copy of the teacher's driver's license and driver's licence number. Section 552.130(a)(1) of the Government Code requires the district to withhold "information [that] relates to . . . a motor vehicle operator's or driver's license or permit issued by an agency of this state." Accordingly, the district must withhold the teacher's driver's license information pursuant to section 552.130(a)(1) of the Government Code.

In summary, the district must withhold pursuant to section 552.101 of the Government Code the following information: the employee's performance evaluations and I-9 form. The district must also withhold all student identifying information pursuant to FERPA. The district must withhold pursuant to section 552.102(a) the information we have marked as coming within the common law right of privacy. The district must withhold the employee's

home address, home telephone number, social security number, and family information pursuant to section 552.117(1), and the employee's driver's license information pursuant to section 552.130(a)(1). Any remaining information in the documents at issue must be released to the requestor.

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).

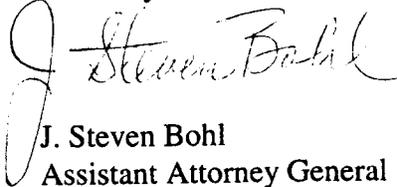
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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 cursive script that reads "J. Steven Bohl". The signature is written in dark ink and is positioned to the right of the typed name.

J. Steven Bohl
Assistant Attorney General
Open Records Division

JSB/RWP/seg

Ref: ID# 151943

Enc. Submitted documents

c: Ms. Michelle M. Martinez
Austin-American Statesman
Williamson County Bureau
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(w/o enclosures)