



January 8, 2002

Mr. Quentin D. Price  
Barton, Price & McElroy  
P.O. Box 488  
Orange, Texas 77631-0172

OR2002-0124

Dear Mr. Price:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 157085.

The Little Cypress-Mauriceville Consolidated Independent School District (the "district"), which you represent, received a request for copies of a former district employee's employment records and a specified letter. You state that you have provided the requestor with most of the responsive information. You claim, however, that portions of the requested information are excepted from disclosure pursuant to sections 552.024, 552.101, 552.102, and 552.130 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and have reviewed the submitted information.

Section 552.117(1) of the Government Code excepts from disclosure the home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024 of the Government Code. *See Gov't Code* § 552.117(1). However, information subject to section 552.117(1) may not be withheld from disclosure if the current or former employee made the request for confidentiality under section 552.024 after the request for information at issue was received by the governmental

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<sup>1</sup> Although you claim that portions of the submitted information are excepted from disclosure pursuant to section 552.024, we note that section 552.117 of the Government Code is the applicable exception to disclosure to claim for this type of information. Accordingly, we address your claim regarding section 552.024 under section 552.117(1) of the Government Code.

body. Whether a particular piece of information is public must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989).

You have submitted to our office a form that reflects that the former district employee requested, prior to the district's receipt of the request for information, that information pertaining to her home address and telephone number be kept confidential. Accordingly, we conclude that the district must withhold from disclosure the information that you have highlighted throughout Exhibit C pertaining to the home address and home telephone number of this former district employee pursuant to section 552.117(1). However, because the former district employee did not elect on that form to deny access to her social security number and information that reveals whether she has family members, you may not withhold any of that type of information in Exhibit C pursuant to section 552.117(1) of the Government Code. *See* Open Records Decision No. 530 at 5 (1989) (stating whether particular piece of information is protected by section 552.117 must be determined at time request for it is made). Consequently, you must release the highlighted information in Exhibit C that reveals whether the former district employee has family members.

However, the social security numbers of the former district employee contained within Exhibit C may be confidential pursuant to federal law. A social security number or "related record" may be excepted from disclosure 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).<sup>2</sup> *See* Open Records Decision No. 622 (1994). These amendments make confidential social security numbers and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See id.* 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 these social security numbers. Therefore, we have no basis for concluding that the social security numbers at issue are confidential pursuant to section 405(c)(2)(C)(viii)(I) of Title 42 of the United States Code. We caution the district, however, that section 552.352 of the Government Code imposes criminal penalties for the release of confidential information. Prior to releasing the social security numbers at issue, you should ensure that the numbers were not obtained or are maintained by the district pursuant to any provision of law enacted on or after October 1, 1990.

You claim that teacher evaluations of the former district employee contained within Exhibit E are excepted from disclosure pursuant to section 552.101 in conjunction with section 21.355 of the Education Code. Section 21.355 provides that "[a] 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

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<sup>2</sup> Section 552.101 of the Government Code excepts information considered to be confidential by law, either constitutional, statutory, or by judicial decision. Section 552.101 encompasses information protected by other statutes.

understood, the performance of a teacher or administrator. *See* 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. *See id.* Based on our review of your arguments and the submitted information in Exhibit E, we conclude that most of the information is confidential as teacher evaluations pursuant to section 21.355 of the Education Code. Therefore, the district must withhold from disclosure most of the submitted information in Exhibit E pursuant to section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code. However, we note that one of the submitted documents in Exhibit E that we have marked does not constitute a document that evaluates the performance of a teacher. Accordingly, the district must release the marked document in Exhibit E to the requestor.

You also claim that the former district employee's driver's license number contained within Exhibit C is excepted from disclosure pursuant to section 552.130 of the Government Code. Section 552.130 excepts information from disclosure that relates to a motor vehicle operator's or driver's license or permit issued by an agency of this state or a motor vehicle title or registration issued by an agency of this state. *See* Gov't Code § 552.130. If the driver's license number that you have highlighted in Exhibit C is a Texas driver's license number, then we conclude that the district must withhold that number from disclosure pursuant to section 552.130 of the Government Code. Otherwise, the district must release that number to the requestor.

You also claim that the former district employee's college transcript in Exhibit D is excepted from disclosure pursuant to section 552.102(b) of the Government Code. Section 552.102(b) states:

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.

Gov't Code § 552.102(b). Based on our review of your arguments and this transcript in Exhibit D, we conclude that the district must withhold all portions of that transcript from disclosure pursuant to section 552.102(b) of the Government Code, except for information concerning the former district employee's curriculum and degree obtained. The former employee's curriculum and degree that she obtained must be released to the requestor.

In summary, the district must withhold from disclosure the information that you have highlighted throughout Exhibit C pertaining to the home address and home telephone number of the former district employee pursuant to section 552.117(1) of the Government Code. The district must release the highlighted information in Exhibit C that reveals whether the former district employee has family members. The social security numbers of the former district

employee contained throughout Exhibit C may be confidential pursuant to federal law. The district must withhold from disclosure most of the submitted information in Exhibit E pursuant to section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code. However, the district must release the document in Exhibit E that we have marked to the requestor. If the driver's license number that you have highlighted in Exhibit C is a Texas driver's license number, then the district must withhold that number from disclosure pursuant to section 552.130 of the Government Code. Otherwise, the district must release that number to the requestor. The district must withhold all portions of the former district employee's college transcript from disclosure pursuant to section 552.102(b) of the Government Code, except for information concerning the employee's curriculum and degree obtained which 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 Texas Building and Procurement 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,



Ronald J. Bounds  
Assistant Attorney General  
Open Records Division

RJB/seg

Ref: ID# 157085

Enc. Marked documents

cc: Mr. Thomas Price  
1055 Wisteria  
Beaumont, Texas 77706  
(w/o enclosures)