



April 16, 2002

Ms. Lisa B. Silvia
Paralegal
Fort Worth Independent School District
100 North University Drive, Suite NW 130
Fort Worth, Texas 76107

OR2002-1907

Dear Ms. Silvia:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 160689.

The Fort Worth Independent School District (the "district") received a request for copies of all documentation in the Special Investigations Office file pertaining to the investigation of a specified teacher. You claim that portions of the submitted information are excepted from disclosure pursuant to sections 552.101 and 552.135 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted information.

Section 552.135 of the Government Code provides:

- (a) "Informer" means a student or former student or an employee or former employee of a school district who has furnished a report of another person's or persons' possible violation of criminal, civil, or regulatory law to the school district or the proper regulatory enforcement authority.
- (b) An informer's name or information that would substantially reveal the identity of an informer is excepted from [required public disclosure].
- (c) Subsection (b) does not apply:
 - (1) if the informer is a student or former student, and the student or former student, or the legal guardian, or spouse of the student or

former student consents to disclosure of the student's or former student's name; or

(2) if the informer is an employee or former employee who consents to disclosure of the employee's or former employee's name; or

(3) if the informer planned, initiated, or participated in the possible violation.

(d) Information excepted under Subsection (b) may be made available to a law enforcement agency or prosecutor for official purposes of the agency or prosecutor upon proper request made in compliance with applicable law and procedure.

(e) This section does not infringe on or impair the confidentiality of information considered to be confidential by law, whether it be constitutional, statutory, or by judicial decision, including information excepted from the requirements of Section 552.021.

Gov't Code § 552.135. Because the legislature limited the protection of section 552.135 to the identity of a person who reports a possible violation of "law," a school district that seeks to withhold information under section 552.135 must clearly identify the specific civil, criminal, or regulatory law that is alleged to have been violated. *See* Gov't Code § 552.301(e)(1)(A).

You state that the information that the district bracketed for our review concerns a report of the teacher's alleged violation of chapter 247 of the Texas Administrative Code. Pursuant to section 552.303 of the Government Code, our office requested that the district "specify in great detail how a violation of these provisions constitutes a possible violation of 'criminal, civil, or regulatory law' under section 552.135" and provide a "specific explanation of which particular provision(s) of chapter 247 of title 19 of the Texas Administrative Code apply to the complained-of activity and how this provision(s) relate(s) to a possible violation of 'criminal, civil or regulatory law' under section 552.135." You state that because the State Board of Education was granted statutory authority pursuant to section 21.041(b)(8) of the Education Code to promulgate a Code of Ethics in chapter 247 of title 19 of the Texas Administrative Code, a violation of these administrative provisions, therefore, constitutes a violation of "regulatory law." Although you claim that Standards 5 and 6 of Principle III of chapter 247 of title 19 of the Texas Administrative Code may have been violated by the educator in this instance, you failed to sufficiently demonstrate how each of those provisions applies to the complained-of activity and how a violation of each particular provision constitutes a violation of criminal, civil, or regulatory law under section 552.135. *See* Gov't Code § 552.301(e)(1)(A). Therefore, after consideration of your arguments, we find that the district has not demonstrated that the conduct reported to the district concerns a possible violation of criminal, civil, or regulatory law under

section 552.135. Accordingly, we conclude that the district may not withhold any portion of the information from disclosure pursuant to section 552.135 of the Government Code.

We note, however, that portions of the information are subject to section 552.117 of the Government Code. Section 552.117(1) 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 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)*. Accordingly, we conclude that the district must withhold from disclosure the information that we have marked pursuant to section 552.117(1), if the teacher requested that this information be kept confidential under section 552.024 prior to the district's receipt of this request.

If the teacher did not elect to withhold her social security number, the number may, nevertheless, be confidential pursuant to federal law and, thus, excepted from disclosure under section 552.101 of the Government Code.¹ We note that the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), 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 Open Records Decision No. 622 (1994)*. The district has cited no law, nor are we aware of any law, enacted on or after October 1, 1990, that authorizes it to obtain or maintain this social security number. Therefore, we have no basis for concluding that the social security number that we have marked is 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 number at issue, the district should ensure that the number was not obtained or is not maintained by the district pursuant to any provision of law enacted on or after October 1, 1990.

In summary, the district must withhold from disclosure the information that we have marked pursuant to section 552.117(1), if the teacher requested that this information be kept confidential under section 552.024 prior to the district's receipt of this request. If the teacher did not elect to withhold her social security number, the number may, nevertheless, be confidential pursuant to federal law. Otherwise, the district must release all of the information to the requestor.

¹ Section 552.101 of the Government Code excepts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. Section 552.101 encompasses information protected by other statutes.

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).

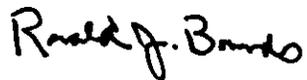
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code

§ 552.325. 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# 160689

Enc. Marked documents

cc: Ms. Michelle Bobo
Offices of United Educators Association
4900 Southeast Loop 820, Suite 100
Fort Worth, Texas 76140
(w/o enclosures)