



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

January 30, 2003

Dr. Katy Herbold
Superintendent
Gonzales Independent School District
926 St. Lawrence
Gonzales, Texas 78629

OR2003-0647

Dear Dr. Herbold:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 175801.

The Gonzales Independent School District (the "district") received a request for "Ms. LaSluer's personnel file and all notes, memorandums and records regarding Ms. LaSluer's alleged improper conduct at other Gonzales I.S.D. facilities/schools." You claim that some of the requested information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code. Because you seek to withhold only some of the requested information, we assume you have released the remaining responsive information. If you have not released the rest of the responsive information, you must immediately release such information to the requestor. *See* Gov't Code §§ 552.006, .301(a), .302. With regard to the information that you seek to withhold, we have considered the exceptions you claim and reviewed the submitted information.

We note initially that one of the documents you submitted as responsive to the present request is dated November 11, 2002. The Public Information Act (the "Act") applies only to information in existence at the time the governmental body receives the request for information. *See* Open Records Decision Nos. 452 at 2-3 (1986) (document is not within the purview of the act if, when a governmental body receives a request for it, it does not exist), 342 at 3 (1982) (Act applies only to information in existence, and does not require the governmental body to prepare new information). Accordingly, the instant request for

information, which you state was received by the district on November 8, 2002, does not apply to the submitted document that was created after that date.

We must now consider your obligations under the Act. Pursuant to section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving an open records request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. You did not, however, submit to this office a copy of the written request for information.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to submit to this office the information required in section 552.301(e) results in the legal presumption that the information is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.--Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982). You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code, which provide compelling reasons for overcoming the presumption of openness raised by section 552.302. *See* Open Records Decision No. 150 (1977) (presumption of openness overcome by a showing that the information is made confidential by another source of law or affects third party interests). Accordingly, we will consider your arguments.

Section 552.101 of the Government Code excepts from disclosure "information deemed confidential by law, either constitutional, statutory, or by judicial decision." Title 26, section 6103(a) of the United States Code renders tax return information confidential. The term "return information" includes "the nature, source, or amount of income" of a taxpayer. 26 U.S.C. 6103(b)(2). This term has been interpreted by federal courts to include any information gathered by the Internal Revenue Service regarding a taxpayer's liability under title 26 of the United States Code. *Mallas v. Kolak*, 721 F. Supp. 748 (M.D.N.C. 1989). Our office has specifically held that W-4 Forms must be withheld in their entirety under this provision. Open Records Decision No. 600 at 9 (1992). Therefore, you must withhold the submitted W-4 Form from disclosure in its entirety pursuant to section 552.101.

Section 552.101 also incorporates section 21.355 of the Education Code. Section 21.355 of the Education Code provides, "A document evaluating the performance of a teacher or administrator is confidential." This office 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.* Similarly, an administrator is someone who is required to hold and does hold a certificate required under chapter 21 of the Education Code and is administering at the time of his or her evaluation. *Id.* We have reviewed the document you seek to withhold under section 21.355 and conclude that the submitted e-mail complaint regarding a substitute teacher does not evaluate the performance of a teacher for purposes of section 21.355 of the Education Code. Thus, the submitted e-mail complaint regarding a substitute teacher is not confidential under section 552.101 in conjunction with section 21.355.

Section 552.130 of the Government Code excepts certain motor vehicle information from release under the Act. Section 552.130 provides in relevant part:

(a) Information is excepted from the requirement of Section 552.021 if the information relates to:

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]
- (2) a motor vehicle title or registration issued by an agency of this state[.]

You must withhold the submitted driver's license and temporary permit photocopies in their entirety pursuant to section 552.130.

Finally, we note that the submitted information contains a social security number. Social security numbers may be withheld in some circumstances under section 552.101 of the Government Code. A social security number or "related record" may be excepted from disclosure under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). *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 claim that subsection 653a(b)(1)(A) of title 42 of the United States Code, which is a part of the Personal Responsibility and Work Opportunity Reconciliation Act, is such a law. This statute requires an employer to furnish to the Directory of New Hires of the state in which the newly hired employee works a report that includes the employee's social security number. *See* 42 U.S.C.A. § 653a(a)(2)(B), (b)(1)(A). As we understand that the district obtained the social security number at issue pursuant to that law, we therefore conclude that the social security number at issue is confidential under section 405(c)(2)(C)(viii)(I), and thus, excepted from public disclosure under section 552.101 on the basis of that federal provision.

In summary, you must withhold the submitted W-4 form pursuant to section 552.101 in conjunction with section 6103 of title 26 of the United States Code. You must withhold the submitted driver's license and temporary permit photocopies in their entirety pursuant to section 552.130. You must withhold the submitted social security number pursuant to section 552.101 in conjunction with the federal Social Security Act. You must release the remaining responsive information.

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,

A handwritten signature in black ink, appearing to read "Maverick F. Fisher". The signature is fluid and cursive, with a prominent "M" and "F".

Maverick F. Fisher
Assistant Attorney General
Open Records Division

MFF/seg

Ref: ID# 175801

Enc: Submitted documents

c: Mr. Bobby Brown
c/o Gonzales Independent School District
926 St. Lawrence
Gonzales, Texas 78629
(w/o enclosures)