



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

April 25, 2003

Mr. Jeffrey S. Young
Texas Tech University
Health Science Center
3601 4th Street, Stop 6246
Lubbock, Texas 79430-6246

OR2003-2803

Dear Mr. Young:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 180048.

The Texas Tech University Health Sciences Center (the "center") received a request for "[a]ll recruiting/hiring information relating to hiring for the position of Clinical Department Administrator II position at the Allred Unit Wichita Falls, October 2002." (Emphasis removed.) You indicate that you have made some of the information available to the requestor. However, you claim that some of the requested information is excepted from disclosure under sections 552.026, 552.101, 552.114, 552.117, 552.122, and 552.136 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

You claim that the Exhibit F must be withheld under sections 552.026 and 552.114 of the Government Code. Section 552.114 excepts from disclosure student records at an educational institution funded completely or in part by state revenue. This office generally applies the same analysis under section 552.114 and the federal Family Educational Rights and Privacy Act of 1974 ("FERPA"). 20 U.S.C. § 1232g(b)(1); *see also* Open Records Decision No. 539 (1990). The federal Family Educational Rights and Privacy Act of 1974 ("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's parent. *See* 20 U.S.C. § 1232g(b)(1). "Education records" means 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). Thus, FERPA and section 552.114 govern the availability of student or education records held by educational agencies or institutions. *See* 20 U.S.C. § 1232g(b)(1); Gov't Code §§ 552.026, 552.114. FERPA generally does not govern access to records in the custody of governmental bodies that are not educational agencies or institutions. *See* Open Records Decision No. 390 at 3 (1983). An exception to this rule applies if the governmental body received the records from an educational agency under written consent of the student. 20 U.S.C. 1232g(b)(4)(B). You do not indicate, nor does it appear, that the information in Exhibit F was received from an educational agency or institution pursuant to the written consent of the student. However, if the center received the information from an educational agency with the written consent of the student it must be withheld under FERPA. Otherwise, the information in Exhibit F must be released to the requestor, with the exception of the social security number that may be confidential as discussed below.

We note that you have marked certain information in Exhibit G and Exhibit E-90 that you argue is confidential under section 552.117 of the Government Code. Section 552.117 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. Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). You state that the employee whose information is at issue "has expressed an interest" in not disclosing her personal information. If this employee has made a timely section 552.024 election, the center must withhold the individual's home address, telephone number, and social security number that you have marked. If the employee did not make a timely section 552.024 election, such information may not be withheld under section 552.117.

You further argue that the social security numbers that you have marked throughout the submitted information are excepted by section 552.101 of the Government Code. 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). *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 indicate that the social security numbers at issue were obtained or are maintained by the center pursuant to 29 C.F.R. section 1602.14, which outlines requirements for the maintenance of personnel and employment records. You inform us that the social security numbers at issue were obtained less than one year ago from applicants for the position that is the subject of the request. However, you do not argue that 29 C.F.R. section 1602.14 specifically requires the center to obtain or maintain social security numbers. Upon our review of this federal provision, we conclude that it does not specifically requires the center to obtain or maintain social security

numbers. Thus, we conclude that the social security numbers are not confidential pursuant to section 405(c)(2)(C)(viii)(I) of Title 42 of the United States Code on the basis of 29 C.F.R. section 1602.14. We caution, however, that section 552.352 of the Public Information Act imposes criminal penalties for the release of confidential information. Prior to releasing any social security number information, you should ensure that no such information was obtained or is maintained pursuant to any provision of law enacted on or after October 1, 1990.

You argue that because Exhibit H consists of interview questions and score sheets and standardized questions and answers pertaining to computer skills, it should be excepted from disclosure under section 552.122 of the Government Code. Section 552.122 excepts from required public disclosure "a test item developed by a . . . governmental body[.]" Gov't Code § 552.122(b). In Open Records Decision No. 626 (1994), this office determined that the term "test item" in section 552.122 includes "any standard means by which an individual's or group's knowledge or ability in a particular area is evaluated," but does not encompass evaluations of an employee's overall job performance or suitability. *Id.* at 6. The question of whether specific information falls within the scope of section 552.122(b) must be determined on a case-by-case basis. *Id.* Traditionally, this office has applied section 552.122 where release of "test items" might compromise the effectiveness of future examinations. *Id.* at 4-5; *see also* Open Records Decision No. 118 (1976). Section 552.122 also protects the answers to test questions when the answers might reveal the questions themselves. *See* Attorney General Opinion JM-640 at 3 (1987); Open Records Decision No. 626 at 8 (1994). Having reviewed the information at issue, we conclude that the questions and answers in Exhibit H do not satisfy the section 552.122 criteria and must be released.

Finally, you argue that e-mail addresses that you have marked are confidential under section 552.137 of the Government Code. Section 552.137 provides:

- (a) An e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under this chapter.
- (b) Confidential information described by this section that relates to a member of the public may be disclosed if the member of the public affirmatively consents to its release.

Gov't Code §552.137. You have not indicated that the members of the public whose e-mail addresses appear in the submitted information have consented to the release of any e-mail address contained in the submitted materials. The center must, therefore, withhold the e-mail addresses you have marked under section 552.137.

In summary, you must withhold the information at Exhibit F if it was received by the center from an educational agency with the student's written consent. You must withhold the

information you have marked under section 552.117 if the employee made a timely section 552.024 election. To the extent social security numbers are not confidential under section 552.117, they may be confidential under federal law. You must withhold the e-mail addresses you have marked under section 552.137. You must release the remaining information 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 Dep't of Pub. 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 that reads "Jennifer E. Berry". The signature is written in a cursive style with a large initial "J".

Jennifer E. Berry
Assistant Attorney General
Open Records Division

JEB/sdk

Ref: ID# 180048

Enc: Submitted documents

c: Ms. Geraldine E. Klein
2005 McGregor Avenue
Wichita Falls, Texas 76301
(w/o enclosures)