



OFFICE *of the* ATTORNEY GENERAL  
GREG ABBOTT

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Mr. Randall L. Meredith  
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P. O. Box 110  
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OR2003-4140

Dear Mr. Meredith:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 182921.

The Corpus Christi Independent School District (the "district") received a request for information. You indicate that you have provided the requestor with some responsive information. You claim, however, that the remaining requested information is excepted from disclosure pursuant to sections 552.101 and 552.102 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted information. We have also considered comments submitted by a representative of the Aransas Pass Independent School District. *See* Gov't Code § 552.304 (providing that person may submit comments stating why information should or should not be released).

Initially, we must address the procedural requirements of section 552.301 of the Government Code. We note that section 552.301(e) requires that a governmental body that requests an attorney general decision under section 552.301(a) must, within a reasonable time, but not later than the fifteenth business day after the date of receiving the written request, submit to the attorney general, among other items, a copy of the written request for information. *See* Gov't Code § 552.301(e). To date, the district has not provided us with a copy of the written request for information. Thus, we find that the district failed to comply with section 552.301 of the Government Code in requesting this decision from us.

Because the district failed to comply with the procedural requirements of section 552.301, the remaining requested information is now presumed public. *See* Gov't Code § 552.302; *see also Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ); *City of Houston v. Houston Chronicle Publ'g Co.*, 673 S.W.2d 316, 323 (Tex.

App.--Houston [1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982). The district must demonstrate a compelling interest in order to overcome the presumption that the remaining requested information is now public. *See* Open Records Decision No. 319. Normally, a compelling interest is demonstrated when some other source of law makes the requested information confidential or when third party interests are at stake. *See* Open Records Decision No. 150 at 2 (1977). Since the district claims that the remaining requested information is excepted from disclosure pursuant to sections 552.101 and 552.102 of the Government Code, we will address these claims with respect to the submitted information.

You claim that portions of the submitted information are excepted from disclosure pursuant to section 552.101 in conjunction with section 21.355 of the Education Code.<sup>1</sup> Section 21.355 provides that "[a] document evaluating the performance of a teacher or administrator is confidential." Educ. Code § 21.355. 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. *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.* 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. *See id.* We note that section 21.352(c) specifically provides that "[e]ach teacher is entitled to receive a written copy of the evaluation on its completion." It is well established that statutes governing access to a specific subset of information held by a governmental body prevail over the generally applicable provisions of the Public Information Act (the "Act"). *See, e.g.,* Open Records Decision No. 478 at 2-3 (1987) (Act does not govern special rights of access granted under other statutes).

Assuming that the individual who is the subject of the submitted information held a certificate or permit required under chapter 21 and was teaching at the time of his evaluation, we find that several of the submitted documents, which we have marked, constitute evaluations, as that term is commonly understood, of this teacher. You state that the district has not received an authorization for release of information that has been signed by the teacher who is the subject of this request. Accordingly, we conclude that the documents that we have marked are excepted from disclosure pursuant to section 552.101 in conjunction with section 21.355 of the Education Code. However, because no portion of the remaining submitted information constitutes such an evaluation, we also conclude that the district may not withhold any portion of the remaining submitted information pursuant to section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code.

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<sup>1</sup> Section 552.101 of the Government Code excepts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. *See* Gov't Code § 552.101. Section 552.101 encompasses information that is protected from disclosure by other statutes.

You also claim that portions of the information are excepted from disclosure pursuant to section 552.102(a) of the Government Code. Section 552.102(a) excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Gov't Code § 552.102(a). Section 552.102(a) is generally applicable to information relating to a public official or employee. See Open Records Decision No. 327 at 2 (1982) (anything relating to employee's employment and its terms constitutes information relevant to person's employment relationship and is part of employee's personnel file). In *Hubert v. Harte-Hanks Texas Newspapers*, 652 S.W.2d 546 (Tex. App.—Austin 1983, writ ref'd n.r.e.), the court ruled that the test to be applied to information claimed to be protected from disclosure under section 552.102 is the same as the test formulated by the Texas Supreme Court in *Industrial Foundation vs. Texas Industrial Accident Board* for information claimed to be protected from disclosure under the common-law right to privacy as incorporated by section 552.101 of the Government Code. See *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 683-85 (Tex. 1976), cert. denied, 430 U.S. 931 (1977).

Information is protected from disclosure under the common-law right to privacy when (1) it is highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. See *id.* The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. See *id.* at 683. After carefully reviewing your arguments and the remaining submitted information, we find that no portion of this information is protected from disclosure under the common-law right to privacy. See Open Records Decision Nos. 470 (1987) (public employee's job performance does not generally constitute his private affairs), 455 (1987) (public employee's job performances or abilities generally not protected by privacy), 444 (1986) (public has legitimate interest in knowing reasons for dismissal, demotion, promotion, or resignation of public employees), 423 at 2 (1984) (statutory predecessor applicable when information would reveal intimate details of highly personal nature), 405 at 2 (1983) (manner in which employee performed his job cannot be said to be of minimal public interest), 400 at 5 (1983) (statutory predecessor protected information only if its release would lead to clearly unwarranted invasion of privacy). Accordingly, we conclude that the district may not withhold any portion of the remaining submitted information under section 552.102 of the Government Code.

You also claim that portions of the submitted information are 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 representations and the submitted information, we conclude that the district must withhold the submitted college transcripts of the former teacher pursuant to section 552.102(b) of the Government Code, except for the information on these transcripts pertaining to the curriculum and degree obtained.

We note that the former teacher's social security number may be excepted from disclosure pursuant to section 552.117(1) 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 timely request that this information be kept confidential under section 552.024 of the Government Code. *See* Gov't Code § 552.117(1). However, information that is responsive to a request may not be withheld from disclosure under section 552.117(1) if the employee did not request confidentiality for this information in accordance with section 552.024 or if the request for confidentiality under section 552.024 for the information was not made until 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 this former teacher's social security number pursuant to section 552.117(1) of the Government Code, but only if he timely elected confidentiality for the number in accordance with section 552.024 of the Government Code prior to the time that the district received this request.

Nevertheless, his social security number may be confidential under section 552.101 in conjunction with federal law. 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 or 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 social security numbers. Therefore, we have no basis for concluding that this number is confidential under 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 this social security number, the district should ensure that it was not obtained and 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 the information that we have marked pursuant to section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code. The district must withhold the submitted college transcripts of the teacher pursuant to section 552.102(b) of the Government Code, except for the information on these transcripts pertaining to the curriculum and degree obtained. The district must withhold the social security number of the teacher who is the subject of this request pursuant to section 552.117(1) of the Government Code, but only if he timely elected confidentiality for the number in accordance with section 552.024 of the Government Code prior to the time

that the district received this request. Nevertheless, his social security number may be confidential under federal law. The district must release the remaining submitted 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).

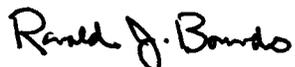
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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,



Ronald J. Bounds  
Assistant Attorney General  
Open Records Division

RJB/lmt

Ref: ID# 182921

Enc. Marked documents

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c/o Randall L. Meredith  
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