



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 6, 2004

Ms. Debra G. Rosenberg  
Atlas & Hall, L.L.P.  
P.O. Box 3725  
McAllen Texas, 78502-3725

OR2004-10324

Dear Ms. Rosenberg:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 214266.

The McAllen Independent School District (the "district"), which you represent, received a request for all postings, job descriptions, interview questions, applicant ratings sheet, resumes, certifications, and recommendations pertaining to the recently filled position of Assistant Superintendent for Instructional Services. You claim that a portion of the requested information is excepted from disclosure under sections 552.102, 552.117 and 552.137 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted information.<sup>2</sup>

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Section 21.355 of the Education Code provides that

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<sup>1</sup>You failed to assert section 552.137 within the ten business day period mandated by section 552.301(a) of the Government Code. Although you did not timely raise section 552.137, this provision can constitute a compelling reason to withhold information, and we will address your arguments on this issue. See Gov't Code §§ 552.301, 552.302.

<sup>2</sup>Although you raise section 552.102, you have not submitted any arguments regarding the applicability of this exception. See Gov't Code § 552.301(e). We presume the district no longer intends to assert section 552.102 as an exception to disclosure and we will not further address this exception in the present ruling.

“[a] document evaluating the performance of a teacher or administrator is confidential.”<sup>3</sup> Educ. Code § 21.355. This office has interpreted section 21.355 to apply to any document that evaluates, as that term is commonly understood, the performance of a teacher or an administrator. *See* Open Records Decision No. 643 (1996). In that decision, we determined that the word “teacher,” for purposes of section 21.355, is a person who is required to and does in fact hold a teaching certificate under subchapter B of chapter 21 of the Education Code or a school district teaching permit under section 21.055 and who is engaged in the process of teaching, as that term is commonly defined, at the time of the evaluation. *See id* at 4. We also concluded that the word “administrator” in section 21.355 means a person who is required to and does in fact hold an administrator’s certificate under subchapter B of chapter 21 of the Education Code and is performing the functions of an administrator, as that term is commonly defined, at the time of the evaluation. *Id.*

In this instance, the submitted documents include evaluations of an employee of the district. You do not inform us, however, as to whether the employee who is the subject of these evaluations held a teacher’s certificate or permit or an administrator’s certificate under subchapter B of chapter 21 of the Education Code and was performing the functions of a teacher or administrator at the time of the submitted evaluations. Therefore, we are unable to conclude that section 21.355 is applicable to any of these evaluations. To the extent, however, that the employee who is the subject of the evaluations held a teacher’s certificate or permit or an administrator’s certificate and was performing the functions of a teacher or administrator at the time of any of the submitted evaluations, any such evaluation is confidential under section 21.355 and must be withheld from the requestor under section 552.101 of the Government Code. *See* Open Records Decision No. 643 at 4. To the extent that the submitted evaluations do not satisfy these criteria, they are not confidential under section 21.355 and may not be withheld under section 552.101.

Next, section 552.117 of the Government Code excepts from disclosure the home addresses, home 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 in accordance with section 552.024. We note that two of the applicants whose information the district has submitted to this office were already employed by the district when they applied for the assistant superintendent position. The district may only withhold these employees’ home addresses, home telephone numbers, social security numbers, and family member information under section 552.117(a)(1) if they made a request for confidentiality under section 552.024 prior to the date on which the present request for information was made. As you do not indicate, and it does not appear, that any of the other

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<sup>3</sup>Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” This section encompasses information protected by other statutes. The Office of the Attorney General will raise a mandatory exception like section 552.101 on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

applicants whose information is at issue is a current or former employee of the district, we conclude that none of the remaining information you have highlighted is excepted under section 552.117 of the Government Code. *See* Open Records Decision No. 674 (2001) (section 552.117 does not apply to applicants for governmental employment or appointment, but to employees or appointees hired by a governmental body). Therefore, if section 552.117(a)(1) is applicable, you must withhold the information you have highlighted, except where we have marked otherwise. We have also marked additional information that must be withheld if section 552.117(a)(1) applies.

Even if not protected by section 552.117, social security numbers may be confidential under federal law. 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 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 id.* We have no basis for concluding that the submitted social security numbers are confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure under section 552.101 on the basis of that federal provision. We caution, however, that section 552.352 of the Act imposes criminal penalties for the release of confidential information. Prior to releasing the social security numbers, you should ensure that no such information was obtained or is maintained by the district pursuant to any provision of law, enacted on or after October 1, 1990.

The submitted information also contain Texas drivers' license information. Section 552.130 excepts from disclosure information that relates to "a motor vehicle operator's or driver's license or permit issued by an agency of this state[.]" Gov't Code § 552.130(a)(1).<sup>4</sup> We have marked Texas drivers' license information that the district must withhold under section 552.130.

The submitted documents also contain e-mail addresses obtained from the public. Section 552.137 makes certain e-mail addresses confidential. Section 552.137 provides:

- (a) Except as otherwise provided by this section, 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.

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<sup>4</sup>This office will raise section 552.130 on behalf of a governmental body, as it is a mandatory exception to disclosure and may not be waived. *See* Gov't Code §§ 552.007, .352; Open Records Decision No. 674 at 3 n.4 (2001).

(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.

(c) Subsection (a) does not apply to an e-mail address:

(1) provided to a governmental body by a person who has a contractual relationship with the governmental body or by the contractor's agent;

(2) provided to a governmental body by a vendor who seeks to contract with the governmental body or by the vendor's agent;

(3) contained in a response to a request for bids or proposals, contained in a response to similar invitations soliciting offers or information relating to a potential contract, or provided to a governmental body in the course of negotiating the terms of a contract or potential contract; or

(4) provided to a governmental body on a letterhead, coversheet, printed document, or other document made available to the public.

(d) Subsection (a) does not prevent a governmental body from disclosing an e-mail address for any reason to another governmental body or to a federal agency.

Gov't Code § 552.137. Under section 552.137, a governmental body must withhold the e-mail address of a member of the general public, unless the individual to whom the e-mail address belongs has affirmatively consented to its public disclosure. *See id.* § 552.137(b). The types of e-mail addresses listed in section 552.137(c) may not be withheld under section 552.137. Likewise, this section is not applicable to an institutional e-mail address, an Internet website address, or an e-mail address that a governmental entity maintains for one of its officials or employees. The district must withhold the e-mail addresses that we have marked under section 552.137, unless the owner of a particular e-mail address has affirmatively consented to its public disclosure.

In summary, the district must withhold 1) the information subject to section 552.117(a)(1) for those current or former district employees who made timely elections under section 552.024; 2) the marked information under section 552.130; and 3) the marked information under section 552.137. The social security numbers may be confidential under federal law. Assuming that the individual who is the subject of the evaluations held a teacher's certificate or permit or an administrator's certificate and was performing the functions of a teacher or administrator at the time of any of the submitted evaluations, any such evaluation is

confidential under section 21.355 and must be withheld from the requestor under section 552.101 of the Government Code. The remaining information 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 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,



Tamara L. Harswick  
Assistant Attorney General  
Open Records Division

TLH/sdk

Ref: ID# 214266

Enc. Submitted documents

c: Mr. Joe E. Gonzales  
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(w/o enclosures)