



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 14, 2006

Ms. Chris G. Elizalde  
Walsh, Anderson, Brown, Schulze, & Aldridge, P.C.  
P. O. Box 2156  
Austin, Texas 78768

OR2006-14681

Dear Ms. Elizalde:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 267573.

The Poteet Independent School District (the "district"), which you represent, received a request for all information pertaining to a named teacher. You state that some of the requested information has been provided to the requestor, but claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted information.

Recently, the United States Department of Education Family Policy Compliance Office (the "DOE") informed this office that the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232(a), does not permit state and local educational authorities to disclose to this office, without parental consent, unredacted, personally identifiable information contained in education records for the purpose of our review in the open records ruling process under the Act.<sup>2</sup> Consequently, state and local educational authorities that receive a request for education records from a member of the public under the PIA must not submit education records to this office in unredacted form, that is, in a form in which "personally identifiable information" is disclosed. *See* 34 C.F.R. § 99.3 (defining "personally identifiable information"). You have submitted, among other things, unredacted education

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<sup>1</sup>Although you assert that the submitted information is excepted under section 552.102 in conjunction with section 21.355 of the Education Code, we note that section 552.102 does not encompass information protected by other statutes. *See* Gov't Code § 552.101.

<sup>2</sup>A copy of this letter may be found on the Office of the Attorney General's website: [http://www.oag.state.tx.us/opinopen/og\\_resources.shtml](http://www.oag.state.tx.us/opinopen/og_resources.shtml).

records for our review. Because our office is prohibited from reviewing these education records to determine whether appropriate redactions under FERPA have been made, we will not address the applicability of FERPA to any of the submitted records. Such determinations under FERPA must be made by the educational authority in possession of the education records.<sup>3</sup> We will, however, address the applicability of section 552.101 of the Government Code to the submitted information.

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 “[a] document evaluating the performance of a teacher or administrator is confidential.” 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. See Open Records Decision No. 643 (1996). The Third Court of Appeals also held that a memorandum from a principal to a teacher was an evaluation for purposes of section 21.355 because it reflected the principal’s judgment regarding the teacher’s actions, gave corrective direction, and provided for further review. *Abbott v. North East Indep. Sch. Dist.*, No. 03-04-00744-CV (Tex. App.—Austin May 12, 2006, n.p.h.).

Upon review of your arguments and the submitted information, we agree that Exhibits 2 and 4 consist of evaluations for purposes of section 21.355. You inform us that the individual at issue holds a teaching certificate and was engaged as a teacher when the evaluation was completed. Therefore, we agree that the district must withhold Exhibits 2 and 4 under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code. However, we find you have not established that Exhibit 3 consists of an evaluation for purposes of section 21.355; therefore, the district may not withhold Exhibit 3 under section 552.101 on that ground.

To conclude, the district must withhold Exhibits 2 and 4 under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code. The district must release Exhibit 3 to the requestor. This ruling does not address the applicability of FERPA to the submitted information. Should the district determine that all or portions of the submitted information consists of “education records” that must be withheld under FERPA, the district must dispose of that information in accordance with FERPA, rather than the Act.

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

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<sup>3</sup>In the future, if [the district or other educational GB] does obtain parental consent to submit unredacted education records and [the district] seeks a ruling from this office on the proper redaction of those education records in compliance with FERPA, we will rule accordingly.

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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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 Office of the Attorney General 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,

  
James L. Coggeshall  
Assistant Attorney General  
Open Records Division

JLC/eb

Ref: ID# 267573

Enc. Submitted documents

c: Ms. Rosemary R. Garcia  
P.O. Box 1501  
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(w/o enclosures)