



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 14, 2006

Ms. Rebecca K. Miltenberger
Lake Dallas Independent School District
Henslee, Fowler, Hepworth & Schwartz, L.L.P.
306 West 7th Street, Suite 1045
Fort Worth, Texas 76102

OR2006-14697

Dear Ms. Miltenberger:

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# 266878.

The Lake Dallas Independent School District (the "district"), which you represent, received a request for information pertaining to a named individual. You inform us that the district has released some of the requested information with social security numbers redacted pursuant to section 552.147 of the Government Code. *See* Gov't Code § 552.147(b) (governmental body may redact social security number without necessity of requesting decision from this office under the Act). You claim that the remaining requested information is excepted from disclosure under sections 552.101, 552.102, and 552.117 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses information made confidential by other statutes. Section 21.355 of the Education Code provides that "[a] document evaluating the performance of a teacher or administrator is confidential." Educ. Code § 21.355. In Open Records Decision No. 643, we determined that for purposes of section 21.355, the word "teacher" means 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 determined 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.*

You state that Exhibit F consists of performance evaluations of an assistant principal. You do not inform us, however, whether the employee who is the subject of the 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 each evaluation. Nevertheless, to the extent that the employee in question held a teacher’s certificate or permit or an administrator’s certificate and was functioning as a teacher or administrator at the time of a given evaluation, any such evaluation is confidential under section 21.355 of the Education Code and must be withheld from disclosure under section 552.101 of the Government Code. *See id.* at 4. To the extent that the evaluations do not satisfy these criteria, they may not be withheld under section 552.101 in conjunction with section 21.355.

Section 552.102(b) of the Government Code excepts from disclosure “a transcript from an institution of higher education maintained in the personnel file of a professional public school employee.” Gov’t Code § 552.102(b). This section further provides, however, that “the degree obtained or the curriculum on a transcript in the personnel file of the employee” are not excepted from disclosure. Thus, except for the information that reveals the degree obtained and the courses taken, the district must withhold the transcripts submitted in Exhibit E under section 552.102(b).

Section 552.117(a)(1) of the Government Code 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). We note that section 552.117 also encompasses a personal cellular number, provided that the cellular phone service is not paid for by a governmental body. *See* Open Records Decision No. 506 at 5-6 (1988) (section 552.117 not applicable to cellular mobile phone numbers paid for by governmental body and intended for official use). The district may only withhold information under section 552.117(a)(1) on behalf of a current or former official or employee who made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made.

You state that the employee in question made a timely election under section 552.024. Therefore, provided that the district does not pay the cellular phone service for the number you have marked, the district must withhold the information you have marked and the additional information we have marked under section 552.117(a)(1). If, however, the district does pay the employee’s cellular phone service, the cellular number must be released.

Lastly, section 552.137 of the Government Code excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c).¹ *See id.* § 552.137(a)-(c). The e-mail address that you have marked does not appear to be of a type specifically excluded by section 552.137(c). As such, this e-mail address must be withheld under section 552.137 unless its owner has affirmatively consented to its release. *See id.* § 552.137(b).

In summary, the district must withhold the evaluations submitted as Exhibit F under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code to the extent that they relate to an employee who held a teacher’s certificate or permit or an administrator’s certificate and was functioning as a teacher or administrator at the time of the evaluations. Other than information that reveals the degree obtained and the courses taken, the district must withhold Exhibit E under section 552.102(b). Provided that the district does not pay for the employee’s cellular telephone, the district must withhold the information you have marked and the additional information we have marked under section 552.117(a)(1) of the Government Code. The district must withhold the e-mail address you have marked in the remaining information under section 552.137, unless the owner of the e-mail address consented to its release. 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

¹Unlike other exceptions to disclosure, this office will raise section 552.137 on behalf of a governmental body, as this exception is mandatory and may not be waived. *See Gov’t Code* §§ 552.007, .352; Open Records Decision No. 674 at 3 n.4 (2001) (mandatory exceptions).

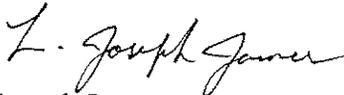
statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental 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. 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,



L. Joseph James
Assistant Attorney General
Open Records Division

LJJ/dh

Ref: ID# 266878

Enc. Submitted documents

c: Ms Patty Durkin
441 Paradise Cove
Shady Shores, Texas 76208
(w/o enclosures)