



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 17, 2006

Mr. Randall J. Cook  
Hardy & Atherton  
909 Ese Loop 323, Suite 750  
Tyler, Texas 75701

OR2006-00536

Dear Mr. Cook:

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# 240300.

The Kilgore Independent School District (the "district"), which you represent, received a request for six categories of information regarding two former teachers. You indicate that the district has no responsive information regarding disciplinary actions or reprimands.<sup>1</sup> You inform us that the district released some of the requested information with student-identifying information redacted pursuant to the Family Educational Rights and Privacy Act ("FERPA") in accordance with Open Records Decision No. 634 (1995).<sup>2</sup> You claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

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<sup>1</sup>We note that the Act does not require a governmental body to disclose information that did not exist at the time the request was received. *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986).

<sup>2</sup>In Open Records Decision No. 634, this office concluded that an educational agency or institution may withhold from public disclosure information that is protected by FERPA and excepted from required public disclosure by sections 552.026 and 552.101 without the necessity of requesting an attorney general decision as to those exceptions.

Initially, we address the district's statement that, prior to releasing the requested resumes and applications, you will redact home addresses, home telephone numbers, social security numbers, and family member information of the teachers at issue under section 552.117 of the Government Code if they made timely elections to withhold such information under section 552.024 of the Government Code. You did not, however, submit the requested resumes and applications or representative samples of these documents for our review. *See* Gov't Code § 552.301(e) (within fifteen business days of receiving written request for information, governmental body must submit to this office copies of specific information at issue, or representative samples). Furthermore, this office has not granted the district a previous determination to withhold information under section 552.117 without the necessity of seeking a decision from this office. Therefore, to the extent that the district has withheld responsive information pursuant to section 552.117, such information is presumed to be public and must be released unless a compelling reason exists to withhold it. *See* Gov't Code §§ 552.301(e), .302. A compelling reason exists to withhold information when the information is confidential by law or where third party interests are at stake. Open Records Decision No. 150 (1977). The applicability of section 552.117 can provide a compelling reason to withhold information. However, as you have not submitted the information at issue for review, we have no basis for finding such information confidential pursuant to section 552.117. We note, however, that section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. *See* Gov't Code § 552.147(b). Thus, we conclude that, except for the teachers' social security numbers, any other information the district may have withheld under section 552.117 must be released to the requestor pursuant to section 552.302. If you believe that this information is confidential and may not lawfully be released, you must challenge this ruling in court as outlined below.

We now turn to your arguments regarding the submitted information. Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section 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. 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). In Open Records Decision No. 643, we determined that the word "teacher" for purposes of section 21.355 means a person who (1) 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 (2) is engaged in the process of teaching, as that term is commonly defined, at the time of the evaluation. *See id.* at 4.

You assert that the submitted information consists of evaluations of certified teachers. Based on your representation and our review of the information at issue, we conclude that the

submitted information constitutes documents evaluating the performance of teachers for purposes of section 21.355 of the Education Code. Accordingly, the district must withhold this information pursuant to section 552.101.

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, 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,



Caroline E. Cho  
Assistant Attorney General  
Open Records Division

CEC/sdk

Ref: ID# 240300

Enc. Submitted documents

c: Ms. Melissa Tresner  
Longview News-Journal  
P.O. Box 1792  
Longview, Texas 75606  
(w/o enclosures)