



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 23, 2006

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

OR2006-05418

Dear Mr. 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# 249780.

The Leander Independent School District (the "district"), which you represent, received a request for personnel information related to a district administrator. You state that some information has been released to the requestor with redactions pursuant to the Family Educational Rights and Privacy Act of 1974, section 1232(g) of title 20 of the United States Code, and section 552.147 of the Government Code.¹ However, you claim that the submitted information is excepted from disclosure under sections 552.101, 552.102, and 552.117 of the

¹ FERPA provides that no federal funds will be made available under any applicable program to an educational agency or institution that releases personally identifiable information, other than directory information, contained in a student's education records to anyone but certain enumerated federal, state, and local officials and institutions, unless otherwise authorized by the student's parent. See 20 U.S.C. § 1232g(b)(1); see also 34 C.F.R. § 99.3 (defining personally identifiable information). This office generally applies the same analysis under FERPA and section 552.114 of the Government Code. Open Records Decision No. 539 (1990). This office has determined that a governmental body may withhold student identifying information that is protected by FERPA and excepted from disclosure under section 552.114 of the Government Code without the necessity of requesting an attorney general decision as to those exceptions. Open Records Decision No. 634 (1995).

We note 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.

Government Code.² We have considered the exceptions you claim and reviewed 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 or an administrator. *See Open Records Decision No. 643 (1996)*. 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 Open Records Decision No. 643 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 assert that some of the submitted information consists of performance evaluations of a district administrator. Based on the reasoning set forth in *Open Records No. 643*, we conclude that the information we have marked evaluates the performance of an administrator for purposes of section 21.355 of the Education Code and is therefore excepted from disclosure under section 552.101 of the Government Code. We find, however, that none of the remaining information at issue evaluates the performance of an administrator as contemplated by section 21.355 of the Education Code. First, although portions of the remaining information reflect subjective comments about the named principal, these comments cannot be categorized or perceived of as an evaluation of the performance of the principal. In addition, we conclude that the remaining documents consisting of improvement plans, self assessments, and assessment matrices, similarly do not evaluate the principal for purposes of section 21.355. Therefore, you may not withhold any of the remaining documents at issue under section 552.101 in conjunction with section 21.355 of the Education Code.

The submitted information includes an I-9 Employment Eligibility Verification form, which is governed by section 1324a of Title 8 of the United States Code. Section 552.101 also

²Although you also raise section 552.024 of the Government Code, we note that section 552.024 is not an exception to public disclosure under chapter 552 of the Government Code. Rather, this section permits a current or former official or employee of a governmental body to choose whether to allow public access to certain information relating to the current or former official or employee that is held by the employing governmental body. *See Gov't Code § 552.024*.

encompasses section 1324a of Title 8 of the United States Code, which provides that an I-9 form and “any information contained in or appended to such form, may not be used for purposes other than for enforcement of this chapter” and for enforcement of other federal statutes governing crime and criminal investigations. *See* 8 U.S.C. § 1324a(b)(5); *see also* 8 C.F.R. § 274a.2(b)(4). Release of the form in this instance would be “for purposes other than for enforcement” of the referenced federal statutes. Accordingly, we conclude that the I-9 form is confidential and may only be released in compliance with the federal laws and regulations governing the employment verification system.

The district asserts that the submitted transcripts are subject to section 552.102(b) of the Government Code. Section 552.102(b) excepts from disclosure most information on a transcript from an institution of higher education maintained in the personnel files of professional public school employees. Gov’t Code § 552.102(b). Section 552.102(b) excepts from disclosure all information from transcripts other than the employee’s name, the courses taken, and the degree obtained. Open Records Decision No. 525 (1989). Thus, with the exception of the employee’s name, the courses taken, and the degree obtained, which the district states it has already provided the requestor, the district must withhold the information in the submitted transcripts pursuant to 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 employees of a governmental body who request that this information be kept confidential under section 552.024. Gov’t Code § 552.117(a)(1). Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body’s receipt of the request for the information. *See* Open Records Decision No. 530 at 5 (1989). Therefore, the district may only withhold information under section 552.117(a)(1) on behalf of a current or former employee who made a request for confidentiality under section 552.024 prior to the date of the district’s receipt of this request for information. In this instance, the district states the employee at issue timely elected to withhold his section 552.117 information. Thus, the district must withhold the section 552.117 information we have marked.

Section 552.130 of the Government Code provides:

(a) Information is excepted from required public disclosure if the information relates to:

(1) a motor vehicle operator’s or driver’s license or permit issued by an agency of this state;

[or]

(2) a motor vehicle title or registration issued by an agency of this state[.]

Gov't Code § 552.130(a)(1), (2). The district must withhold the Texas motor vehicle record information we have marked under section 552.130 of the Government Code.³

In summary, the district must withhold the marked administrator evaluations under section 552.101 in conjunction with section 21.355 of the Education Code, the marked I-9 form under section 552.101 in conjunction with section 1324a of Title 8 of the United States Code, the marked information in the submitted transcripts under section 552.102, the marked personal employee information under section 552.117, and the marked Texas motor vehicle record information under section 552.130. The remaining information must be released.

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).

³The Office of the Attorney General will raise a mandatory exception like section 552.130 of the Government Code on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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,



Michael A. Lehmann
Assistant Attorney General
Open Records Division

MAL/sdk

Ref: ID# 249780

Enc. Submitted documents

c: Mr. P. Jason Collins
12213 Capella Trail
Austin, Texas 78732
(w/o enclosures)