



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 2, 2006

Mr. Christopher B. Gilbert
Bracewell & Guiliani, L.L.P.
711 Louisiana Street, Suite 2300
Houston, Texas 77002-2770

OR2006-08571

Dear Mr. Gilbert:

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# 255740.

The Spring Branch Independent School District (the "district"), which you represent, received a request for information pertaining to the number of vacancies for the position of principal at all district elementary, junior high, and high schools for the 2004-2005, 2005-2006, and 2006-2007 school years; the job applications submitted to the district for the position of principal at all district elementary, junior high, and high schools for the same time period; and the names and salaries of the individuals employed by the district as principals. You state that the district will release some of the requested information, and will withhold the social security numbers contained in the requested information pursuant to section 552.147 of the Government Code. *See Gov't Code § 552.147(b)* (governmental body may withhold social security number from public release without the necessity of requesting a decision from this office under the Act). You claim that portions of the submitted information are excepted from disclosure under sections 552.101, 552.102, 552.117, 552.130, and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.¹

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

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 protected by other statutes. Section 21.355 of the Education Code provides, “a document evaluating the performance of a teacher or administrator is confidential.” Educ. Code § 21.355. This office interpreted this section to apply to any document that evaluates, as that term is commonly understood, the performance of a teacher or administrator. Open Records Decision No. 643 (1996). In that opinion, this office also determined that a teacher is someone who is required to hold and does hold a certificate or permit required under chapter 21 of the Education Code and is teaching at the time of the evaluation. *Id.* Similarly, an administrator is someone who is required to hold and does hold a certificate required under chapter 21 of the Education Code and is serving as an administrator at the time of the evaluation. *Id.* Based on the reasoning set out in Open Records Decision No. 643, we determine that the submitted information we have marked is confidential under section 21.355 of the Education Code. Accordingly, the district must withhold this information pursuant to section 552.101 of the Government Code.

Section 552.101 also encompasses the doctrine of common law privacy. Common law privacy protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). This office has found that some kinds of medical information or information indicating disabilities or specific illnesses is protected under common law privacy. *See* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). Accordingly, the district must withhold the information we have marked under section 552.101 in conjunction with common law privacy.

The district seeks to withhold portions of the submitted documents pursuant to section 552.102 of the Government Code. Section 552.102(b) excepts from disclosure all information from transcripts of professional public school employees other than the employee’s name, the courses taken, and the degree obtained. Gov’t Code § 552.102(b); Open Records Decision No. 526 (1989). We note that one of the documents the district seeks to withhold under section 552.102(b) consists of a semester grade report. Section 552.102(b) applies only to transcripts. Accordingly, section 552.102(b) does not apply information contained in documents other than transcripts, and the district may not withhold this information on that basis. *See* Open Records Decision Nos. 649 at 3 (1996) (language of a confidentiality provision controls the scope of its protection), 478 at 2 (1987) (statutory confidentiality requires express language making certain information confidential or stating that information shall not be released to the public). The remaining submitted information contains transcripts that are subject to section 552.102(b). Accordingly, with the exception of the employee’s name, the courses taken, and the degree obtained, the district must withhold the information in the submitted transcripts pursuant to section 552.102(b) of the Government Code.

Section 552.117 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 timely request that this information be kept confidential under section 552.024 of the Government Code.² *See* Gov't Code § 552.117(a)(1). However, information subject to section 552.117(a)(1) may not be withheld from disclosure if the current or former employee made the request for confidentiality under section 552.024 after the request for information was received by the governmental body. Whether a particular piece of information is public must be determined at the time the request for it is received by the governmental body. *See* Open Records Decision No. 530 at 5 (1989). You identify the employees who elected confidentiality under section 552.024 prior to the date on which the district received this request. Accordingly, the district must withhold the information that we have marked pursuant to section 552.117(a)(1) of the Government Code.

You assert that the submitted information includes Texas motor vehicle record information that is excepted under section 552.130 of the Government Code. 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 [or] a motor vehicle title or registration issued by an agency of this state." Gov't Code § 552.130(a)(1), (2). In accordance with section 552.130, the district must withhold the Texas motor vehicle record information that we have marked.

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). *See* Gov't Code § 552.137(a)-(c). We note that section 552.137 does not apply to a government employee's work e-mail address because such an address is not that of the employee as a "member of the public" but is instead the address of the individual as a government employee. The e-mail addresses we have marked do not appear to be of a type specifically excluded by section 552.137(c). Therefore, the district must withhold the e-mail addresses we have marked in accordance with section 552.137 unless the district receives consent for their release.

In summary, the evaluations we have marked are confidential under section 21.355 of the Education Code and must be withheld pursuant to section 552.101 of the Government Code. The district must withhold the information we have marked under section 552.101 in conjunction with common law privacy. With the exception of the employee's name, the courses taken, and the degree obtained, the district must withhold the information in the

²Although the district asserts that portions of the submitted information are excepted from disclosure under section 552.017 of the Government Code, we note that this section does not exist. We understand the district to assert section 552.117, as section 552.117 is the correct citation for the substance of your arguments under this section, and the district timely raised section 552.117 as an exception to disclosure in its initial correspondence with our office.

submitted transcripts pursuant to section 552.102(b) of the Government Code. The district must withhold the marked personal information pertaining to district employees pursuant to 552.117(a)(1) of the Government Code. The district must withhold the marked Texas motor vehicle record information pursuant to section 552.130 of the Government Code. Finally, the district must withhold the marked e-mail addresses pursuant to section 552.137 of the Government Code. 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).

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,



Lisa V. Cubriel
Assistant Attorney General
Open Records Division

LVC/eb

Ref: ID# 255740

Enc. Submitted documents

c: Mr. Humberto Silva
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(w/o enclosures)