



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 5, 2006

Mr. Bob Ramirez
Escamilla & Poneck, Inc.
P.O. Box 200
San Antonio, Texas 78291-0200

OR2006-11656

Dear Mr. Ramirez:

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# 261152.

The Eagle Pass Independent School District (the "district"), which you represent, received a request for the personnel file of a named employee. You claim that some of the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.117, and 552.147 of the Government Code. 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." Section 552.101 encompasses section 21.355 of the Education Code, which 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.*

The district indicates that the information in Exhibit 2 consists of teacher and administrator evaluations. Assuming that the individual who is the subject of this information held a teaching 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 the submitted evaluations, we conclude that the information we have marked is confidential in its entirety under section 21.355 of the Education Code and must be withheld from disclosure under section 552.101 of the Government Code. We find, however, that none of the remaining information at issue consists of a document that evaluates the performance of a teacher or administrator for the purposes of section 21.355. We therefore conclude that the district may not withhold any of the remaining information in Exhibit 2 under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code.

Section 552.101 also encompasses section 6103(a) of Title 26 of the United States Code, which provides that tax return information is confidential. *See* 26 U.S.C. § 6103(a)(2), (b)(2)(A), (p)(8); *see also* Open Records Decision No. 600 (1992); Attorney General Op. MW-372 (1981). Accordingly, the district must withhold the W-2 forms in Exhibit 5 pursuant to section 552.101 of the Government Code in conjunction with section 6103(a) of Title 26 of the United States Code.

You indicate that the information in Exhibit 4 is protected under the Medical Practices Act ("MPA"). Section 552.101 also encompasses the MPA, chapter 159 of the Occupations Code. Section 159.002 of the MPA provides in part:

- (b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.
- (c) A person who receives information from a confidential communication or record as described by this chapter, other than a person listed in Section 159.004 who is acting on the patient's behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

Occ. Code § 159.002 (b)-(c). Upon review, we conclude that the information in Exhibit 4 does not consist of medical records subject to the MPA. Therefore, the district may not withhold any of the information in Exhibit 4 under the MPA.

Section 552.102(a) of the Government Code excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Gov't Code § 552.102(a). In *Hubert v. Harte-Hanks Texas Newspapers*,

652 S.W.2d 546 (Tex. App.—Austin 1983, writ ref'd n.r.e.), the court ruled that the test to be applied to information claimed to be protected under section 552.102(a) is the same as the test formulated by the Texas Supreme Court in *Industrial Foundation* for information claimed to be protected under the doctrine of common law privacy as incorporated by section 552.101. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 683-85 (Tex. 1976). Accordingly, we will consider your section 552.101 and section 552.102(a) privacy claims together.

For information to be protected from public disclosure by the common law right of privacy under section 552.101, the information must meet the criteria set out in *Industrial Foundation*. In *Industrial Foundation*, the Texas Supreme Court stated that information is excepted from disclosure if (1) the information contains highly intimate or embarrassing facts, the release of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Id.* at 685. The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. We have marked the information in Exhibit 4 that must be withheld under section 552.101 on the basis of common law privacy. None of the remaining information at issue may be withheld on this basis.

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 in Exhibit 6 under section 552.102(b).

Section 552.117(a)(1) excepts from disclosure the home address, home telephone number, social security numbers, and family member information of a current or former official or employee of a governmental body who requests that this information be kept confidential under section 552.024 of the Government Code. However, an individual’s personal post office box number is not a “home address” for purposes of section 552.117, and therefore may not be withheld under section 552.117. *See Open Records Decision No. 622 at 4 (1994)* (purpose of section 552.117 is to protect public employees from being harassed at home). 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)*. Therefore, 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. Accordingly, if the employee timely elected to keep her personal information confidential, the district must withhold the information we have marked under section 552.117(a)(1). The

district may not withhold this information under section 552.117(a)(1) if the employee did not make a timely election to keep the information confidential.

We note that even if the employee's social security number is not protected under section 552.117(a)(1), it must be withheld under section 552.147 of the Government Code. Section 552.147 provides "[t]he social security number of a living person is excepted from" required public disclosure under the Act. Therefore, if the employee did not make a timely election, the district must withhold the employee's social security number under section 552.147.¹

In summary, in conjunction with section 552.101 of the Government Code, the district must withhold (1) the evaluations we have marked in Exhibit 2 under section 21.355 of the Education Code, (2) the W-2 forms in Exhibit 5 under section 6103(a) of Title 26 of the United States Code, and (3) the information we have marked in Exhibit 4 on the basis of common law privacy. Except for the information that reveals the degree obtained and the courses taken, the district must withhold the transcripts in Exhibit 6 under section 552.102(b). If the employee timely elected to keep her personal information confidential, the district must withhold the information we have marked under section 552.117(a)(1). Even if the employee's social security number is not protected under section 552.117(a)(1), it must be withheld under section 552.147 of the Government Code. The remaining submitted information must be released.²

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

¹ 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.

² As our ruling is dispositive, we need not address your remaining claims.

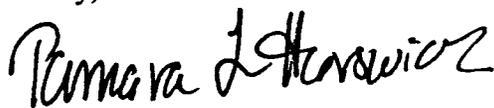
statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental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



Tamara L. Harswick
Assistant Attorney General
Open Records Division

TLH/sdk

Ref: ID# 261152

Enc. Submitted documents

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(w/o enclosures)