



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 10, 2006

Ms. Lydia L. Perry
Law Offices of Robert E. Luna, P.C.
4411 North Central Expressway
Dallas, Texas 75205

OR2006-13372

Dear Ms. Perry:

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# 264394.

The DeSoto Independent School District (the "district"), which you represent, received a request for information regarding a former district employee. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.117, 552.136, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that you have marked information in the submitted documents as excepted from disclosure under sections 552.117 and 552.147. However, the requestor has specifically excepted from his request the employee information that the district seeks to withhold under those exceptions. Therefore, this ruling does not address the public availability of this non-responsive information, and the district is not required to release it in response to this request.

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception encompasses information that other statutes make confidential. You raise section 552.101 in conjunction with section 21.355 of the Education Code. Section 21.355 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 and who is engaged in the process of teaching 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 at the time of the evaluation. *Id.* You state that the marked documents in Exhibit B evaluate the performance of this individual while employed as a teacher and later as an administrator. Based on your representations and our review of these documents, we agree that the district must withhold the marked documents in Exhibit B under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code.

Next you claim that the “Employers First Report of Injury or Illness” form is confidential in its entirety under section 552.101 in conjunction with section 402.083(a) of the Labor Code. Section 402.083(a) provides that “[i]nformation in or derived from a claim file regarding an employee is confidential and may not be disclosed by the [Texas Workers’ Compensation Commission] except as provided by this subtitle.” Labor Code § 402.083(a). In Open Records Decision No. 533 (1989), the City of Brownsville received a request for similar information. This office construed the predecessor to section 402.083(a) to apply only to information that the governmental body obtained from the Industrial Accident Board, subsequently the Texas Workers’ Compensation Commission, and now the Texas Department of Insurance, Division of Workers’ Compensation (the “division”). Information that was provided by the district to the division does not fall within this provision. Accordingly, documents in the hands of the district that were not obtained from the division may not be withheld under section 402.083. Upon review of the submitted information, we find that you have failed to establish that this form was obtained from the division as opposed to created by the district and provided to the division. Thus you may not withhold this form under section 552.101 in conjunction with section 402.083(a) of the Labor Code.

Section 552.101 also encompasses the doctrine of common-law privacy, which 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). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. This office has found that some kinds of medical information or information indicating disabilities or specific illnesses are excepted from required public disclosure under common-law privacy. *See* Open Records Decision No. 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). You state that the submitted information contains reference to an injury that is protected under common-law privacy. However, we note that the injury in question occurred while the employee was performing his job. Accordingly, we find that this information is of legitimate public interest. *See generally* Open Records Decision Nos. 455 (1987) (public employee’s

job performances or abilities generally not protected by privacy), 423 at 2 (1984). Because this information is of legitimate public interest, we find that you have failed to establish both prongs of common-law privacy and you may not withhold this information under section 552.101 in conjunction with common-law privacy.

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” is not excepted from disclosure. The submitted information contains the educational transcripts of the individual at issue and includes information beyond the degree obtained and the curriculum undertaken. Thus, based on our review of the submitted information, we agree that the information you have marked must be withheld under section 552.102(b).

Section 552.136 of the Government Code states that “[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” Gov’t Code § 552.136. You represent that the numbers you have marked under section 552.136 consist of district bank account numbers. Based upon that representation, we agree that the marked numbers are access device numbers, and that the district must withhold the marked numbers under section 552.136.

In summary, you must withhold the marked documents in Exhibit B under section 552.101 in conjunction with section 21.355 of the Education Code. You must withhold the marked portions of the educational transcripts under section 552.102(b) of the Government Code. You must withhold the marked access device numbers under section 552.136. You must release the remaining information.

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,



Justin D. Gordon
Assistant Attorney General
Open Records Division

JDG/sdk

Ref: ID# 264394

Enc. Submitted documents

c: Mr. Bruce L. Dean
1924 Tewa Trail
DeSoto, Texas 75115
(w/o enclosures)