



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 12, 2006

Ms. Ylise Janssen  
Senior School Law Attorney  
Austin Independent School District  
Office of the General Counsel  
1111 West Sixth Street, Suite A-240  
Austin, Texas 78703-5399

OR2006-14577

Dear Ms. Janssen:

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# 266722.

The Austin Independent School District (the "district") received a request for a named district teacher's "personnel file and all documentation related to any district action following the Friday[,] September 22, 2006 traffic accident on [Manchaca Road]." You state you have released some information but you claim that the submitted personnel information is excepted from disclosure under sections 552.101, 552.102, and 552.117 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We note that the Texas Comptroller of Public Accounts currently has a lawsuit pending against the Office of the Attorney General that pertains, in part, to public employees' dates of birth: *Tex. Comptroller of Public Accounts v. Abbott*, No. D-1-GN-001120 (126<sup>th</sup> Dist. Ct., Travis County, Tex.). Accordingly, we do not address your arguments with regard to the public employee birth dates that the district seeks to withhold. We will allow the trial court to determine whether that type of information must be released to the public.

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. Section 552.101 encompasses information protected by other statutes, such as 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 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). Further, this office has 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. Open Records Decision No. 643.

You claim that Exhibit B contains evaluations of a teacher made confidential under section 21.355. Based on the reasoning set out in Open Records Decision No. 643 and our review of the submitted arguments and information, we conclude that Exhibit B is confidential under section 21.355. We therefore conclude the district must withhold Exhibit B under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code.

You claim the submitted college transcripts in Exhibit G, H, and I are excepted from disclosure under section 552.102(b) of the Government Code. Section 552.102(b) provides:

a transcript from an institution of higher education maintained in the personnel file of a professional public school employee, except that this section does not exempt from disclosure the degree obtained or the curriculum on a transcript in the personnel file of the employee.

Gov’t Code § 552.102(b). Thus, with the exception of information concerning the named teacher’s curricula and degrees obtained, you must withhold Exhibits G, H, and I pursuant to section 552.102(b) of the Government Code.

Section 552.117(a)(1) of the Government Code excepts from public disclosure the present and former 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 such information be kept confidential under section 552.024. However, an individual’s personal post office box number is not a “home address” and therefore may not be withheld under section 552.117. See Gov’t Code § 552.117; Open Records Decision No. 622 at 4 (1994) (“The legislative history of section 552.117(1)(A) makes clear that its purpose is to protect public employees from being harassed *at home*. See House Committee on State Affairs, Bill Analysis, H.B. 1976, 69th Leg. (1985); Senate Committee on State Affairs, Bill Analysis, H.B. 1976, 69th Leg. (1985).” (Emphasis added.)); see also Open Records Decision Nos. 658 at 4 (1998), 478 at 2 (1987), 465 at 4-5 (1987). 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). In this

instance, you provide documentation showing that the named teacher whose personal information is at issue timely elected to keep her personal information confidential under section 552.024. Accordingly, the district must withhold the personal information you have marked in the remaining submitted information under section 552.117(a)(1), except the post office box numbers you have marked must be released.

In summary, this ruling does not address the public employee birth dates in the submitted information. The district must withhold Exhibit B under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code. With the exception of information concerning the named teacher's curricula and degrees obtained, the district must withhold Exhibits G, H, and I pursuant to section 552.102(b) of the Government Code. The district must withhold the personal information you have marked in the remaining submitted information under section 552.117(a)(1), except the post office box numbers you have marked must be released. The remaining submitted 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,

A handwritten signature in black ink that reads "Ramsey Abarca". The signature is written in a cursive style with a long, sweeping tail.

Ramsey A. Abarca  
Assistant Attorney General  
Open Records Division

RAA/eb

Ref: ID# 266722

Enc. Submitted documents

c: Mr. Wrey Hinds  
KVUE-TV  
3201 Steck Avenue  
Austin, Texas 78757  
(w/o enclosures)