

The ruling you have requested has been modified pursuant to a court order. The court judgment has been attached to this document.



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 5, 2007

Mr. Mike Atkins
Atkins, Peacock & Lewis, L.L.P.
For Ector County Independent School District
823 Central
Odessa, Texas 79761

OR2007-01435

Dear Mr. Atkins:

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# 270705.

The Ector County Independent School District (the "district"), which you represent, received a request for information relating to an employee of the district. You inform us that the requestor modified her request for information and that the district has released some of the information that is responsive to the modified request.¹ You have submitted information that the district seeks to withhold under section 552.101 of the Government Code. We have considered the exception you claim and have reviewed the submitted information.

Section 552.101 excepts from 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 another statute makes confidential. You raise section 552.101 in conjunction with 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

¹See Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information).

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 contend that the named employee’s Examination for the Certification of Educators in Texas (“ExCET”) score reports are confidential under section 21.355. Having considered your arguments and reviewed the submitted information, we conclude that you have not demonstrated that the information in question is an evaluation of a teacher or administrator for the purposes of the statute. Therefore, the district may not withhold any of the submitted information under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code.

We note, however, that section 552.117 of the Government Code may be applicable to some of the information at issue.² Section 552.117(a)(1) excepts from disclosure the home address and telephone number, social security number, 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. 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). Thus, information may only be withheld 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 of the governmental body’s receipt of the request for the information. Information may not be withheld under section 552.117(a)(1) on behalf of a current or former official or employee who did not timely request confidentiality under section 552.024. We have marked the information that may be excepted from disclosure under section 552.117. To the extent that the information in question consists of the home address of an employee who timely requested confidentiality for that information under section 552.024, the district must withhold the marked information under section 552.117(a)(1).

In summary, the marked information must be withheld under section 552.117(a)(1) of the Government Code to the extent that it consists of the home address of an employee who timely requested confidentiality for the information under section 552.024 of the Government Code. With the exception of any information that must be withheld under section 552.117(a)(1), the 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.

²Unlike other exceptions to disclosure under the Act, this office will raise section 552.117 on behalf of a governmental body, as this exception is mandatory and may not be waived. *See* Gov’t Code §§ 552.007, .352; Open Records Decision No. 674 at 3 n.4 (2001) (mandatory exceptions).

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).

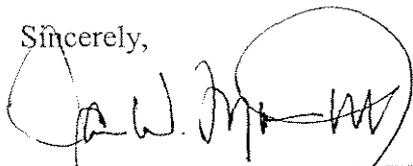
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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,



James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/jww

Ref: ID# 270705

Enc: Submitted documents

c: Ms. Jennifer Edwards
Odessa American
P.O. Box 2952
Odessa, Texas 79760-2952
(w/o enclosures)

DR. JOE GALLEGOS,
Plaintiff,

V.

GREG ABBOTT, ATTORNEY GENERAL
OF TEXAS, and ECTOR COUNTY
INDEPENDENT SCHOOL DISTRICT,
Defendants.

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IN THE DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

200th JUDICIAL DISTRICT

Filed in The District Court
of Travis County, Texas

JUL 10 2008
At 9:54
Annelis Rodriguez-Mendoza, Clerk

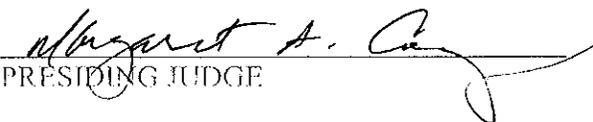
AGREED FINAL JUDGMENT

On this date, the Court heard the parties' motion for agreed final judgment. By their motion, Plaintiff Dr. Joe Gallegos and Defendants Greg Abbott, Attorney General of Texas, and Ector County Independent School District (Ector ISD) announce to the Court that all matters of fact and things in controversy between them have been fully and finally compromised and settled. This cause is an action under the Public Information Act (PIA), Tex. Gov't Code Ann. ch. 552 (West 2004 & Supp. 2006). The parties represent to the Court that, in compliance with Tex. Gov't Code § 552.325(c), the requestor, Jennifer Edwards, was sent reasonable notice of this setting and of the parties' agreement that Ector ISD must withhold the information at issue; that the requestor was also informed of her right to intervene in the suit to contest the withholding of this information; and that the requestor has not informed the parties of her intention to intervene. Neither has the requestor filed a motion to intervene or appeared today. After considering the agreement of the parties and the law, the Court is of the opinion that entry of an agreed final judgment is appropriate, disposing of all claims between these parties.

IT IS THEREFORE ADJUDGED, ORDERED AND DECLARED that:

1. The information at issue, Dr. Gallegos' ExCet Examinee Score Report, for the October 17, 1992 test date, is confidential under Tex. Educ. Code § 21.048, and, thus, is excepted from disclosure by Tex. Gov't Code § 552.101;
2. Ector County Independent School District shall withhold the information at issue from the requestor;
3. All costs of court are taxed against the parties incurring the same;
4. All relief not expressly granted is denied; and
5. This Agreed Final Judgment finally disposes of all claims between Plaintiff and Defendants and is a final judgment.

SIGNED this the 10 day of July, 2008.

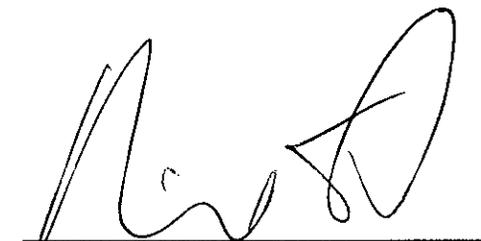

PRESIDING JUDGE

APPROVED:



KEVIN F. LUNGWITZ
Lungwitz & Lungwitz, P.C.
3005 South Lamar Blvd.
Suite D-109-362
Austin, Texas 78704-4785
Telephone: (512) 461-0188
Fax: (866) 739-7138
State Bar No. 126988790

ATTORNEY FOR PLAINTIFF,
DR. JOE GALLEGOS



MIKE ATKINS
Atkins, Peacock & Lewis, L.L.P.
P. O. Box 111
Odessa, Texas 79760
Telephone: (432) 333-4744
Fax: (432) 333-4143
State Bar No. 01406500

ATTORNEY FOR DEFENDANT,
ECTOR COUNTY INDEPENDENT SCHOOL
DISTRICT

B Loudermilk

BRENDA LOUDERMILK
Chief, Open Records Litigation
Administrative Law Division
Office of the Attorney General
P.O. Box 12548
Austin, Texas 78711-2548
Telephone: 475-4292
Fax: 320-0167
State Bar No. 12585600

ATTORNEY FOR DEFENDANT,
GREG ABBOTT, ATTORNEY GENERAL
OF TEXAS