



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 6, 2007

Ms. Leticia D. McGowan  
School Attorney  
Dallas Independent School District  
3700 Ross Avenue  
Dallas, Texas 75204-5491

OR2007-01480

Dear Ms. McGowan:

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# 270843.

The Dallas Independent School District (the "district") received a request for all information pertaining to the termination of a named teacher. You state that the district has released some of the responsive information. You claim that some of the submitted information is excepted from disclosure under sections 552.101, 552.117, and 552.130 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. *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 id.* at 4.

The submitted information includes a teacher evaluation. Assuming that the individual who is the subject of this information held a teaching certificate or permit under subchapter B of

chapter 21 of the Education Code and was performing the functions of a teacher at the time of the submitted evaluations, we conclude that the information the district has marked is confidential under section 21.355 of the Education Code and must be withheld from disclosure under section 552.101 of the Government Code. *See Abbott v. North East Indep. Sch. Dist.*, No. 03-04-00744-CV, 2006 WL 1293545 (Tex. App.—Austin May 12, 2006, no pet.) (concluding that written reprimand constitutes evaluation for purposes of Educ. Code § 21.355).

Section 552.101 of the Government Code also encompasses information made confidential under section 411.097 of the Government Code. Criminal history record information (“CHRI”) generated by the National Crime Information Center or by the Texas Crime Information Center is confidential. Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety (“DPS”) maintains, except that the DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See Gov’t Code* § 411.083.

A school district may obtain from CHRI from the DPS if authorized by section 411.097 and subchapter C, chapter 22 of the Education Code; however, a school district may not release CHRI except as provided by section 411.097(d). *See Gov’t Code* § 411.097(d); Educ. Code § 22.083(c)(1) (authorizing school district to obtain from any law enforcement or criminal justice agency all CHRI relating to school district employee); *see also Gov’t Code* § 411.087. Section 411.087 authorizes a school district to obtain CHRI from the F.B.I. or any other criminal justice agency in this state. *Id.* Thus, any CHRI generated by the federal government or another state may not be made available to the requestor except in accordance with federal regulations. *See Open Records Decision No. 565 (1990).* Furthermore, any CHRI the district obtained from the DPS or any other criminal justice agency in this state must be withheld under section 552.101 of the Government Code in conjunction with section 411.097(d) of the Government Code. *See Educ. Code* § 22.083(c)(1).

You explain that “the requested documentation that [the district] possesses that is responsive to the current request was received pursuant to Texas Government Code § 411.097 and Texas Education Code Chapter 22, Subchapter C[.]” However, after carefully reviewing the submitted documents, we conclude that none of the remaining information was obtained from the DPS or any other criminal justice agency in this state; therefore, section 411.097(d) is inapplicable here and the district may not withhold any of the submitted information pursuant to section 552.101 in conjunction with section 411.097.

Next, we address your claim that portions of the submitted information are excepted from disclosure under section 552.117 of the Government Code. Section 552.117(a)(1) excepts from disclosure the current and former home addresses and telephone numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024. *Gov’t Code* § 552.117(a)(1). Whether information is protected by section 552.117(a)(1) must be

determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Pursuant to section 552.117(a)(1), the district must withhold the personal information that pertains to a current or former employee of the district who elected, prior to the district's receipt of the request for information, to keep such information confidential. Such information may not be withheld if the former employee at issue did not make a timely election. We have marked information that must be withheld if section 552.117 applies.

Regardless of a timely election under section 552.024, the former employee's social security number is excepted from disclosure under section 552.147 of the Government Code.<sup>1</sup> Section 552.147 provides that "[t]he social security number of a living person is excepted from" required public disclosure under the Act. Therefore, the district must withhold the former employee's social security number under section 552.147 of the Government Code.<sup>2</sup>

Finally, the submitted information contains a copy of a Texas driver's license. Section 552.130 of the Government Code 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. Accordingly, the district must withhold the Texas driver's license pursuant to section 552.130 of the Government Code.

In summary, in conjunction with section 552.101 of the Government Code, the district must withhold the information you have marked under section 21.355 of the Education Code. The district must also withhold the personal information we have marked under section 552.117 if the former employee timely elected under section 552.024 to keep such information confidential. Regardless of a timely election under section 552.024, the former employee's social security number is excepted from disclosure under section 552.147 of the Government Code. Finally, the district must withhold the marked Texas driver's license under section 552.130 of the Government Code. 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.

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<sup>1</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

<sup>2</sup>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. Gov't Code § 552.147(b).

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).

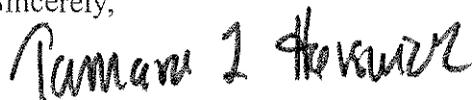
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records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



Tamara L. Harswick  
Assistant Attorney General  
Open Records Division

TLH/jww

Ref: ID# 270843

Enc. Submitted documents

c: Mr. Mark Smith  
WFAA-News  
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Dallas, Texas 75202  
(w/o enclosures)