



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 23, 2007

Ms. Ylise Janssen  
Senior School Law Attorney  
Austin Independent School District  
1111 West Sixth Street  
Austin, Texas 78703-5399

OR2007-11011

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# 287462.

The Austin Independent School District (the "district") received a request for information pertaining to the selection of the Special Education Director position. You state that the district is withholding the responsive information in Exhibit C pursuant to the previous determination set forth in Open Records Letter No. 2007-04228 (2007). *See* Gov't Code § 552.301; Open Records Decision No. 673 (2001). You also state that some of the requested information has been made available to the requestor, but claim that the submitted information is excepted from disclosure under sections 552.101 and 552.102 of the Government Code. We have considered the exceptions you claims and reviewed the submitted information.

Initially, 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 individuals' dates of birth: *Tex. Comptroller of Public Accounts v. Abbott*, No. 03-07-00102-CV (Tex. App.—Austin). Accordingly, we will allow the trial court to determine whether the dates of birth in the submitted information must be released to the public.

The district asserts that some of the submitted information is excepted under section 552.101 of the Government Code, which excepts from disclosure "information considered to be

confidential by law, either constitutional, statutory, or by judicial decision.” This section encompasses information protected by other statutes. Section 21.355 of the Education Code provides that “[a] document evaluating the performance of a teacher or administrator is confidential.” 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 a “teacher” for purposes of section 21.355 means a person who (1) 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 (2) is engaged in the process of teaching, as that term is commonly defined, at the time of the evaluation. *See id.* at 4. We also determined an “administrator” for purposes of section 21.355 means a person who (1) is required to and does in fact hold an administrator’s certificate under subchapter B of chapter 21 of the Education Code and (2) is performing the functions of an administrator, as that term is commonly defined, at the time of the evaluation. *Id.*

The information at issue consists of administrator assessment forms that ask for ratings from a score of zero to six for various attributes of a candidate, including problem analysis, judgment, organizational ability, and leadership. The submitted forms were filled out by references for the applicants for the position at issue and returned to the district. You inform us that the applicants in Exhibit E “(1) were required to and did hold necessary teaching and/or administrative certifications in Texas . . . and (2) were, at the time the evaluations of their work were performed, employed in either an administrative or teaching capacity[.]” You inform us that the applicant in Exhibit G holds teaching certificates in both Texas and Colorado but, at the time of her application, was employed as a teacher in Colorado. Based on your representations and our review of the information at issue, the district must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code. The remaining information in these exhibits does not evaluate the performance of a teacher or administrator for purposes of section 21.355; therefore, the district may not withhold this information under section 552.101 on that ground. *See id.*

You inform us that the applicant in Exhibit M holds both teaching and administrative certifications in Texas, but that she is currently an employee of the Texas Education Agency. You assert that this applicant “is not specifically serving as an administrator at a public school, but is serving the public education sector in a very similar manner[.]” However, based on your representations, we find you have failed to establish that this individual was engaged in the process of teaching or performing the functions of an administrator, as that term is commonly defined, at the time of the evaluation. *ORD 643 at 4*. Therefore, we conclude you have not established that the forms in Exhibit M are confidential under section 21.355.

You inform us that the remaining applicants are not licensed as teachers or administrators in Texas, but rather are possibly licensed in other states. Thus, based upon your representations that these applicants do not hold teaching or administrator's certificates under subchapter B of chapter 21 of the Education Code or school district teaching permits under section 21.055, we find you have not established that the remaining information is confidential under section 21.355 of the Education Code. *See* ORD 643 at 4. Accordingly, the district may not withhold the remaining information under section 552.101 in conjunction with section 21.355 of the Education Code.

You assert that the grade point averages in the submitted applications are excepted under section 552.102(b) of the Government Code. Section 552.102(b) excepts from disclosure all information from transcripts of professional public school employees other than the employee's name, the courses taken, and the degree obtained. Gov't Code § 552.102(b); Open Records Decision No. 526 (1989). The grade point averages in the submitted applications do not consist of information from transcripts for purposes of section 552.102(b); therefore, the district may not withhold this information under section 552.102.

We note that section 552.117 of the Government Code may be applicable to some of the remaining information. Section 552.117(a)(1) excepts from disclosure the current 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 request that this information be kept confidential under section 552.024 of the Government Code. 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 this 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 for individuals who did not make a timely election. We have marked information that must be withheld if section 552.117 applies.

Finally, we note that some of the remaining information is excepted under section 552.137 of the Government Code. Section 552.137 excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body" unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See* Gov't Code § 552.137(a)-(c). Section 552.137 does not apply to a government employee's work e-mail address because such an address is not that of the employee as a "member of the public," but is instead the address of the individual as a government employee. The e-mail addresses at issue do not appear to be of a type specifically excluded by section 552.137(c). You do not inform us that a member of the public has affirmatively consented to the release of any e-mail address contained in the submitted materials. Therefore, the district must withhold the e-mail addresses we have marked under section 552.137.

To conclude, the district must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code, the information marked under section 552.117 of the Government Code if the employees at issue timely elected to withhold that information, and the e-mail addresses marked under section 552.137 of the Government Code. The district 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).

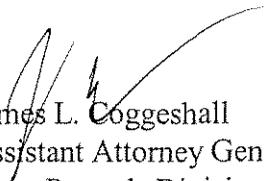
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records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



James L. Coggeshall  
Assistant Attorney General  
Open Records Division

JLC/jh

Ref: ID# 287462

Enc. Submitted documents

c: Ms. Pat Alvarez  
ALMA of Austin  
c/o Ms. Ylise Janssen  
Senior School Law Attorney  
Austin Independent School District  
1111 West Sixth Street  
Austin, Texas 78703-5399  
(w/o enclosures)