



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 6, 2007

Ms. Sandra D. Carpenter  
Walsh, Anderson, Brown, Schilze & Aldridge, P.C.  
P.O. Box 168046  
Irving, Texas 75016

OR2007-11664

Dear Ms. Carpenter:

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# 288266.

The Terrell Independent School District (the "district") received a request for information pertaining to the employment of a particular individual. You claim that portions of the submitted 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 have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that any person may submit comments stating why information should or should not be released).

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 other statutes make confidential. You assert that Tab 2 is excepted from disclosure under 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 and who is engaged

in the process of teaching at the time of the evaluation. *See id* at 4. You contend that the documents submitted as Exhibit 2 are confidential under section 21.355 as evaluative documents of a district teacher. Upon review, we agree that the submitted information constitutes evaluations. Thus, provided the employee at issue was required to hold and did hold the appropriate certificates and was teaching at the time of the submitted evaluations, the information at issue is confidential under section 21.355, and the district must withhold it 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 552.102(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; Open Records Decision No. 526 (1989). Thus, with the exception of the employee's name, the courses taken, and the degree obtained, the district must withhold the transcript information in Exhibit 3 under section 552.102(b) of the Government Code.

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. You state and submit a record reflecting that the individual at issue elected to keep his information confidential. However, we note that a portion of the information the district has marked under section 552.117 consists of the individual's name, background, and references. Because section 552.117, is not applicable to these types of information, section 552.117 is not applicable to the information we have marked for release. The district must withhold the remaining information it has marked in Tab 3 under section 552.117.

Some of the remaining information consists of a Texas driver's license number. Section 552.130 of the Government Code provides that information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by a Texas agency is excepted from public release. Gov't Code § 552.130(a)(1), (2). The district must withhold the Texas motor vehicle record information we have marked under section 552.130.

The remaining information also contains an e-mail address that is excepted from disclosure under section 552.137 of the Government Code, which requires a governmental body to

withhold the e-mail address of a member of the general public, unless the individual to whom the e-mail address belongs has affirmatively consented to its public disclosure. *See* Gov't Code § 552.137 (b). You do not inform us that the owner of the e-mail address has affirmatively consented to release. Therefore, the district must withhold the e-mail address we have marked under section 552.137.

In summary, provided the employee at issue was required to hold and did hold the appropriate certificates and was teaching at the time of the submitted evaluations, the evaluations must be withheld under section 552.101 in conjunction with section 21.355 of the Education Code. With the exception of the employee's name, the courses taken, and the degree obtained, the district must withhold the transcript information in Exhibit 3 under section 552.102(b) of the Government Code. With exception of the information we have marked for release, the district must withhold the information it has marked under section 552.117. The district must withhold the Texas motor vehicle record information we have marked under section 552.130. The district must withhold the e-mail address we have marked under section 552.137.

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, appearing to read "Justin D. Gordon", written over a horizontal line.

Justin D. Gordon  
Assistant Attorney General  
Open Records Division

JDG/jh

Ref: ID# 288266

Enc. Submitted documents

c: Ms. Angie Hiepler  
8162 FM Road 2728  
Terrell, Texas 75161  
(w/o enclosures)