



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 8, 2008

Ms. Emily D. Newhouse
Schwartz & Eichelbaum, P.C.
4201 West Parmer Lane, Suite A-100
Austin, Texas 78727

OR2008-00318

Dear Ms. Newhouse:

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# 299250.

The Mission Consolidated Independent School District (the "district"), which you represent, received a request for information pertaining to a former district teacher. You state that the district has released some of the requested information. We note that you have redacted social security numbers pursuant to section 552.147.¹ You claim that the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.115, 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." Gov't Code § 552.101. 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. *See* Open Records Decision No. 643 (1996). In Open Records Decision No. 643, we determined that a "teacher" for purposes of

¹Section 552.147 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).

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. On review of the information, we agree that the submitted information in Exhibit C consists of an evaluation. Thus, provided the employee at issue was required to hold and did hold the appropriate certificate and was teaching at the time of the submitted teaching evaluations, the submitted information in Exhibit C is confidential under section 21.355 of the Education Code, and the district must withhold it under section 552.101 of the Government Code.

Section 552.101 also encompasses section 21.048 of the Education Code, which addresses teacher certification examinations. Section 21.048(c-1) provides the following

The results of an examination administered under this section are confidential and are not subject to disclosure under Chapter 552, Government Code, unless:

- (1) the disclosure is regarding notification to a parent of the assignment of an uncertified teacher to a classroom as required by Section 21.057; or
- (2) the educator has failed the examination more than five times.

Educ. Code § 21.048(c-1). The submitted information in Exhibit F contains TECAT Exam results of the teacher at issue. You do not inform us that subsection 21.048(c-1)(1) or (2) is applicable; therefore, the district must withhold the information we have marked in Exhibit F under section 552.101 in conjunction with section 21.048 of the Education Code. We note however, that if the individual has failed the examination more than five times, the information we have marked under section 21.048(c-1) must be released.

A portion of the information submitted by the district consists of medical records, access to which is governed by the Medical Practices Act (“MPA”) as encompassed by section 552.101 of the Government Code. Occ. Code §§ 151.001-165.160. Section 159.002 of the MPA provides in part:

- (a) A communication between a physician and a patient, relative to or in connection with any professional services as a physician to the patient, is confidential and privileged and may not be disclosed except as provided by this chapter.
- (b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.

(c) A person who receives information from a confidential communication or record as described by this chapter, other than a person listed in Section 159.004 who is acting on the patient's behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

Id. § 159.002(a)-(c). This office has concluded that the protection afforded by section 159.002 extends only to records created by either a physician or someone under the supervision of a physician. *See* Open Records Decision Nos. 487 (1987), 370 (1983), 343 (1982). Medical records must be released upon the patient's signed, written consent, provided that the consent specifies (1) the information to be covered by the release, (2) reasons or purposes for the release, and (3) the person to whom the information is to be released. *See* Occ. Code §§ 159.004, .005. When a patient is deceased, medical records may be released only on the signed consent of the deceased's personal representative. *See id.* § 159.005(a)(5). The consent in that instance must specify (1) the information to be covered by the release, (2) reasons or purposes for the release, and (3) the person to whom the information is to be released. *See id.* §§ 159.004, .005. Any subsequent release of medical records must be consistent with the purposes for which the governmental body obtained the records. *See id.* § 159.002(c); Open Records Decision No. 565 at 7 (1990). We have marked the medical records that are subject to the MPA. The district may only disclose these records in accordance with the access provisions of the MPA. Absent the applicability of an MPA access provision, the district must withhold these records pursuant to the MPA.² *See* Open Records Decision No. 598 (1991).

Section 552.102(b) of the Government Code excepts from disclosure "a transcript from an institution of higher education maintained in the personnel file of a professional public school employee." Gov't Code § 552.102(b). This section further provides, however, that "the degree obtained or the curriculum on a transcript in the personnel file of the employee" are not excepted from disclosure. Thus, except for the information that reveals the degree obtained and the courses taken, the district must withhold the submitted transcripts in Exhibit B under section 552.102(b) of the Government Code.

You assert that the birth certificate card in Exhibit E is excepted under section 552.115 of the Government Code. Section 552.115(a) provides that "[a] birth or death record maintained by the bureau of vital statistics of the Texas Department of Health or local registration official is excepted from the requirements of Section 552.021[.]" Gov't Code § 552.115(a). Because section 552.115 only applies to information maintained by the bureau of vital statistics or local registration official, the district may not withhold the birth certificate card in Exhibit E pursuant to that provision. *See* Open Records Decision No. 338 (1982).

²As our ruling is dispositive, we need not address your remaining arguments under the Americans with Disabilities Act and common-law privacy for this information.

Section 552.117(a)(1) of the Government Code excepts from disclosure the current and former home addresses and telephone numbers, and family member information of current or former officials of a governmental body who request that this information be kept confidential under section 552.024. We note, however, an individual's personal post office box number is not a "home address" for purposes of section 552.117, and therefore may not be withheld under section 552.117. *See* Open Records Decision No. 622 at 4 (1994) (purpose of section 552.117 is to protect public employees from being harassed at home). 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 the information that must be withheld if section 552.117 applies.

Finally, you claim that some of the remaining submitted information in Exhibit E is excepted under section 552.130 of the Government Code, which 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 that we have marked Exhibit E under section 552.130.

In summary, the district must withhold the submitted teacher evaluations in Exhibit C under section 552.101 in conjunction with section 21.355 of the Education Code. The district must withhold the submitted information we have marked in Exhibit F under section 552.101 in conjunction with section 21.048 of the Education Code. The district may only disclose the records we have marked in accordance with the access provisions of the MPA. Absent the applicability of an MPA access provision, the district must withhold these records pursuant to the MPA in conjunction with section 552.101 of the Government Code. Other than information that reveals the degree obtained and the courses taken, the information in Exhibit B must be withheld under section 552.102(b) of the Government Code. We have marked information that must be withheld under section 552.117(a)(1) of the Government Code if the employee to whom it pertains timely elected confidentiality. Finally, the district must withhold the Texas motor vehicle record information that we have marked in Exhibit E under section 552.130 of the Government Code. The remaining information must be released to the requestor.

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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, 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 challenge 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 'Jessica J. Maloney', with a stylized flourish at the end.

Jessica J. Maloney
Assistant Attorney General
Open Records Division

JJM/jh

Ref: ID# 299250

Enc. Submitted documents

c: Mr. Steve Bresnan
Steve Bresnen & Associates
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(w/o enclosures)