



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 10, 2008

Mr. Thomas E. Myers
Brackett & Ellis
Counsel for Keller ISD
100 Main Street
Fort Worth, Texas 76102-3090

OR2008-03164

Dear Mr. Myers:

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# 304988.

The Keller Independent School District (the "district"), which you represent, received a request for all information held by the district concerning six named employees. You state that the district is releasing some of the requested information. You claim that the rest of the requested information is excepted from disclosure under sections 552.101, 552.102, 552.117, 552.137, and 552.147 of the Government Code. We have considered the exceptions you claim and have reviewed the information you submitted.

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 exception encompasses information that other statutes make confidential. You raise section 552.101 in conjunction with section 21.408 of the Education Code, which provides in part:

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). You state that the submitted documents contain the results of certification examinations. You also state that neither of the statutory exceptions to the confidentiality of examination results is applicable in this instance. Based on your representations and our review of the information in question, we have marked the information that the district must withhold under section 21.048(c-1) of the Education Code.

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 exception also provides, however, that “the degree obtained or the curriculum on a transcript in the personnel file of the employee” are not excepted from disclosure. *Id.*; see Open Records Decision No. 526 (1989). Therefore, except for the information that reveals the degree obtained and the courses taken, the district must withhold the transcripts that we have marked under section 552.102(b). Although you also seek to withhold other information under this exception, we note that the other information at issue is not contained in transcripts from institutions of higher education. We therefore conclude that the district may not withhold that information under section 552.102(b). *Cf.* Open Records Decision No. 649 at 3 (1996) (language of statutory confidentiality provision controls scope of its protection).

Section 552.117(a)(1) of the Government Code excepts from disclosure the home address and telephone number, social security number, and family member information of a current or former 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 under section 552.024 that the information be kept confidential.

We have marked the information that falls within the scope of section 552.117.¹ You state that the employees concerned requested confidentiality for the marked information under section 552.024 prior to the district's receipt of this request for information. Based on your representation, we conclude that the district must withhold the marked information under section 552.117(a)(1).²

We note that the submitted documents contain Texas driver's license information. Section 552.130 of the Government Code exempts from disclosure information relating to a motor vehicle operator's or driver's license or permit issued by an agency of this state.³ See Gov't Code § 552.130(a)(1). The district must withhold the Texas driver's license number that we have marked under section 552.130.

Section 552.137 of the Government Code states that "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under [the Act]," unless the owner of the e-mail address has affirmatively consented to its public disclosure. *Id.* § 552.137(a)-(b). The types of e-mail addresses listed in section 552.137(c) may not be withheld under this exception. See *id.* § 552.137(c). Likewise, section 552.137 is not applicable to an institutional e-mail address, an Internet website address, or an e-mail address that a governmental entity maintains for one of its officials or employees. The district must withhold the personal e-mail addresses that we have marked under section 552.137 unless the owner of an e-mail address has affirmatively consented to its disclosure.

We note that some of the remaining information appears to be protected by copyright. A governmental body must allow inspection of copyrighted information unless an exception to disclosure applies to the information. See Attorney General Opinion JM-672 (1987). An officer for public information also must comply with copyright law, however, and is not required to furnish copies of copyrighted information. *Id.* A member of the public who wishes to make copies of copyrighted information must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the

¹We note that a post office box number is not a "home address" for purposes of section 552.117. See Open Records Decision No. 622 at 4 (1994) (legislative history makes clear that purpose of Gov't Code § 552.117 is to protect public employees from being harassed *at home*) (citing House Committee on State Affairs, Bill Analysis, H.B. 1976, 69th Leg. (1985); Senate Committee on State Affairs, Bill Analysis, H.B. 1976, 69th Leg. (1985)) (emphasis added).

²As we are able to make this determination, we need not address your claim under section 552.147 of the Government Code.

³Unlike other exceptions to disclosure under the Act, this office will raise section 552.130 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).

copyright law and the risk of a copyright infringement suit. *See* Open Records Decision No. 550 at 8-9 (1990).

In summary: (1) the district must withhold the marked information that is confidential under section 552.101 of the Government Code in conjunction with section 21.048 of the Education Code; (2) except for the information that reveals the degree obtained and the courses taken, the marked transcripts must be withheld under section 552.102(b) of the Government Code; (3) the district must withhold the information that we have marked under section 552.117(a)(1) of the Government Code; (4) the marked Texas driver's license number must be withheld under section 552.130 of the Government Code; and (5) the marked e-mail addresses must be withheld under section 552.137 of the Government Code unless the owner of an e-mail address has consented to its disclosure. The rest of the submitted information must be released. Any information that is protected by copyright must be released in accordance with copyright law.

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).

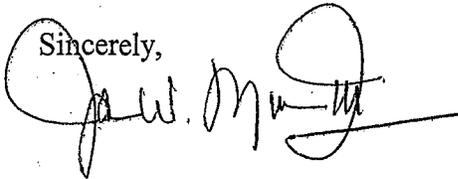
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can challenge that decision by suing the governmental

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 'James W. Morris, III', written over a circular stamp or mark.

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

JWM/ma

Ref: ID# 304988

Enc: Submitted documents

c: Ms. Stacey Kellerman
c/o Mr. Thomas E. Myers
Brackett & Ellis
100 Main Street
Fort Worth, Texas 76102-3090
(w/o enclosures)