



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 9, 2009

Ms. Kelli H. Karczewski
Feldman, Rogers, Morris & Grover, L.L.P.
222 North Mound, Suite 2
Nacogdoches, Texas 75961

OR2009-01656

Dear Ms. Karczewski:

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# 334524.

The Longview Independent School District (the "district"), which you represent, received a request for a named district employee's personnel file and the reason the named employee was the subject of an investigation by the district. You state that some of the requested information is being released to the requestor. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.117, and 552.137 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

The United States Department of Education Family Policy Compliance Office (the "DOE") has informed this office that the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232(a), does not permit state and local educational authorities to disclose to this office, without parental consent, unredacted, personally identifiable information contained in education records for the purpose of our review in the open records ruling process under

¹Although you raise section 552.024 of the Government Code, we note that this section is not an exception to public disclosure under the Act. Rather, this section permits a current or former official or employee of a governmental body to choose whether to allow public access to certain information relating to the current or former official or employee that is held by the employing governmental body. See Gov't Code § 552.024. Section 552.117 of the Government Code is instead the proper exception to assert.

the Act.² Consequently, state and local educational authorities that receive a request for education records from a member of the public under the Act must not submit education records to this office in unredacted form, that is, in a form in which “personally identifiable information” is disclosed. *See* 34 C.F.R. § 99.3 (defining “personally identifiable information”). The submitted information includes unredacted education records. Because our office is prohibited from reviewing these records to determine whether appropriate redactions under FERPA have been made, we will not address the applicability of FERPA to any of the submitted records. Such determinations under FERPA must be made by the educational authority in possession of such records.³ We will, however, address the applicability of the claimed exceptions to the submitted information.

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 section encompasses information protected by other statutes such as section 21.355 of the Education Code, which provides that “[any] document evaluating the performance of a teacher or administrator is confidential.” This office interpreted this section to apply to any document that evaluates, as that term is commonly understood, the performance of a teacher or administrator. 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.

You state that the individual at issue held a teacher’s certificate under subchapter B of chapter 21 of the Education Code and was performing the functions of a teacher at the time the information at issue was created. You state some of the submitted documents, consisting of investigative records related to allegations of misconduct that resulted in the named employee resigning, are confidential teacher evaluations. Upon review, we find that the documents at issue are witness and administrator statements, a cellular telephone bill, and correspondence between a district administrator and a parent. As such, we conclude these documents do not evaluate the teacher as contemplated by section 21.355. Accordingly, the district may not withhold these documents under section 552.101.

Next, you claim that portions of the named employee’s transcripts are excepted under section 552.102(b). Section 552.102(b) excepts from disclosure all information from

²A copy of this letter may be found on the Office of the Attorney General’s website: <http://www.oag.state.tx.us/open/20060725usdoe.pdf>.

³In the future, if the district does obtain parental consent to submit unredacted education records and the district seeks a ruling from this office on the proper redaction of those education records in compliance with FERPA, we will rule accordingly.

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). Thus, with the exception of the employee's name, courses taken, and degree obtained, the district must withhold the information in the submitted transcripts pursuant to section 552.102(b) of the Government Code.

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 official or employee of a governmental body who requests that this information be kept confidential under section 552.024 of the Government Code. *Id.* § 552.117(a)(1). We note that section 552.117 also encompasses a personal cellular telephone number, provided that the service is not paid for by a governmental body. *See* Open Records Decision No. 506 at 5-7 (1988) (statutory predecessor to section 552.117 not applicable to cellular telephone numbers provided and paid for by governmental body and intended for official use). You also contend e-mail addresses are excepted under section 552.117. We note, however, that e-mail addresses do not constitute "home addresses" for purposes of section 552.117.⁴ 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. You state, and have provided an election form showing, that one of the employees at issue elected to keep his home address, telephone number, and social security number confidential prior to the date the district received the instant request. Accordingly, we find that the district must withhold this employee's information which we have marked under section 552.117(a)(1). However, the district may only withhold this employee's marked cellular telephone number if the district did not pay for the cellular telephone service.

We have also marked the cellular telephone number of a district administrator under section 552.117(a)(1). The submitted information does not reflect whether the district administrator elected to keep his telephone number confidential pursuant to section 552.024 of the Government Code prior to the district receiving the request at issue. If the district administrator made a timely election under section 552.024 and the cellular telephone service was not paid for by the district, the district must withhold the marked cellular telephone number in the submitted information under section 552.117(a)(1). If the district administrator did not make a timely election under section 552.024, or if the district paid for

⁴*See generally*, Open Records Decision No. 622 at 4 (1994) (purpose of confidentiality provision excepting public employee's personal information from required disclosure is to protect them from being harassed *at home*) (citing House Committee on State Affairs, Bill Analysis, H.B. 1976, 69th Leg. (1985)).

the cellular telephone service, the marked cellular telephone number of the district administrator may not be withheld under section 552.117(a)(1).

Next, we address your argument that the e-mail addresses in the submitted information are subject to section 552.137 of the Government Code. Section 552.137 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. Gov't Code § 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). We note that cellular telephone numbers are not protected under section 552.137 of the Government Code. Thus, none of the cellular telephone numbers you seek to withhold under section 552.137 may be withheld on that basis. We have marked the e-mail addresses in the remaining information that are not subject to section 552.137(c). The district must withhold these marked e-mail addresses under section 552.137, unless the owners of the e-mail addresses have affirmatively consented to their disclosure.

We note that the remaining information contains ExCET Exam results of a district teacher. 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). 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 the remaining information under section 552.101 in conjunction with section 21.048 of the Education Code.

In summary, with the exception of the employee's name, courses taken, and degree obtained, the district must withhold the information in the submitted transcripts pursuant to section 552.102(b) of the Government Code. The district must withhold the information we have marked of the employee who made a timely election under section 552.024 of the Government Code under section 552.117(a)(1) of the Government Code. If the district administrator timely elected confidentiality under section 552.024 of the Government Code, the district must withhold the information we have marked under section 552.117(a)(1) of

the Government Code. However, the marked cellular telephone numbers may only be withheld under section 552.117(a)(1) of the Government Code if the cellular telephone service was not paid for by the district. The district must also withhold the information we have marked under section 552.137 of the Government Code, unless the owners of the e-mail addresses consent to their disclosure. The district must withhold the information we have marked in the remaining information under section 552.101 in conjunction with section 21.048 of the Education Code. The remaining information must be released to the requestor.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Laura E. Ream
Assistant Attorney General
Open Records Division

LER/jb

Ref: ID# 334524

Enc. Submitted documents

cc: Requestor
(w/o enclosures)