



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 7, 2009

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

OR2009-04603

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# 339095.

The Timpson Independent School District (the "district"), which you represent, received a request for information pertaining to a named former employee. You state the district has released some of the requested information. You claim that portions of the submitted information are excepted from disclosure under sections 552.101, 552.102, 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, such as section 6103(a) of title 26 of the United States Code. Prior decisions of this office have held that section 6103(a) renders tax return information confidential. See Attorney General Opinion H-1274 (1978) (tax returns); Open Records Decision No. 600 (1992) (W-4 forms). Section 6103(b) defines the term "return information" as "a taxpayer's identity, the nature, source, or amount of income, payments, tax withheld, deficiencies, overassessments or tax payments . . . or any other data, received by, recorded by, prepared by, furnished to, or collected by the Secretary [of the Internal Revenue Service] with respect to a return . . . or the determination of the existence, or possible existence, of liability . . . for any tax, . . . penalty, . . . , or offense[.]" See 26 U.S.C. § 6103(b)(2)(A). Federal courts have construed the term "return information" expansively to include any information gathered by the Internal Revenue Service regarding a taxpayer's liability under title 26 of the United States Code. See *Mallas v. Kolak*, 721 F. Supp 748, 754 (M.D.N.C. 1989), *aff'd in part*, 993 F.2d 1111 (4th Cir. 1993). Accordingly, the district must withhold the marked W-4 tax form under section 552.101 of the Government Code in conjunction with section 6103(a).

The submitted information also contains an I-9 form. Section 552.101 of the Government Code also encompasses section 1324a of title 8 of the United States Code. Section 1324a of title 8 of the United States Code provides that an Employment Eligibility Verification Form I-9 “may not be used for purposes other than for enforcement of this chapter” and for enforcement of other federal statutes governing crime and criminal investigations. *See* 8 U.S.C. § 1324a(b)(5); *see also* 8 C.F.R. § 274a.2(b)(4). The release of the submitted I-9 form in response to this request for information would be “for purposes other than for enforcement” of the referenced federal statutes. Accordingly, the marked I-9 form is excepted from disclosure under section 552.101 of the Government Code in conjunction with section 1324a of title 8 of the United States Code, and may be released only for purposes of compliance with the federal laws and regulations governing the employment verification system.¹

Section 552.101 also encompasses section 21.355 of the Education Code. Section 21.355 provides that “a document evaluating the performance of a teacher or administrator is confidential.” Educ. Code § 21.355. In addition, the court has concluded a written reprimand constitutes an evaluation for purposes of section 21.355. *See North East Indep. Sch. Dist. v. Abbott*, 212 S.W.3d 364 (Tex. App.—Austin 2006, no pet.). This office has 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 concluded that a “teacher” for purposes of section 21.355 means a person who is required to and does in fact hold a certificate or permit required under chapter 21 of the Education Code and is teaching at the time of his or her evaluation. *Id.* In addition, we determined that the word “administrator” in section 21.355 means a person who is required to and does in fact hold an administrator’s certificate under subchapter B of chapter 21 of the Education Code and is performing the functions of an administrator, as that term is commonly defined, at the time of the evaluation. *Id.*

You state, and provide documentation showing, the former employee held an administrator’s certificate and a teacher’s certificate and was performing as an administrator or a teacher at the time of the submitted evaluations. Based on your representations and our review of the submitted documents, we conclude that 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. However, we conclude the blank evaluation forms do not evaluate the former employee for purposes of section 21.355. Therefore, the district may not withhold this information under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code.

Next, you claim that portions of the former employee’s transcripts are excepted under section 552.102(b). Section 552.102(b) excepts from disclosure all information from transcripts of professional public school employees other than the employee's name, the

¹As our ruling on this information is dispositive, we need not address your remaining claim under section 552.102(a) of the Government Code.

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.

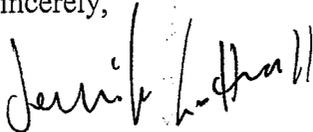
You assert that some of the remaining information is excepted under section 552.130 of the Government Code, which provides that information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by a Texas agency is excepted from public release.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

In summary, the district must withhold the information we have marked pursuant to section 552.101 of the Government Code in conjunction with: (1) section 6103(a) of title 26 of the United States Code; (2) section 1324a of title 8 of the United States Code; and (3) section 21.355 of the Education Code. 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 also withhold the Texas motor vehicle record information we have marked under section 552.130 of the Government Code. As you have raised no further exceptions to disclosure, the remaining information must be released.

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,



Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/eeg

Ref: ID# 339095

Enc. Submitted documents

c: Requestor
(w/o enclosures)