



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 2, 2009

Mr. Jaime J. Munoz  
Attorney at Law  
P.O. Box 47  
San Juan, Texas 78589

OR2009-09181

Dear Mr. Munoz:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 348144.

The La Joya Independent School District (the "district"), which you represent, received requests for applications submitted for the position of Executive Director of Human Resources in 2008 and 2009 and complaints or grievances filed against Adriana Villarreal and Alicia Gutierrez between January 1, 2002 and April 9, 2009. The district does not object to release of the requested applications and has not submitted them for our review. Thus, to the extent they exist, we assume the district has released them. *See* Gov't Code §§ 552.301, .302. The district asserts the remainder is excepted from disclosure under section 552.101 of the Government Code. We have considered the district's claimed exception to disclosure and have reviewed the submitted information.

First, the district acknowledged it failed to timely comply with the procedural requirement of section 552.301(b). *Id.* § 552.301(b) (governmental body must ask for attorney general's decision and state exceptions that apply within ten business days of receiving written request for information). This failure results in the presumption the requested information is public information. *Id.* § 552.302. In order to overcome the presumption, a governmental body must provide compelling reasons why the information should not be disclosed. *Id.*; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ); *see* Open Records Decision No. 630 (1994). This office has held a compelling reason exists to withhold information when the information is confidential by another source of law. *See* Open Records Decision No. 150 (1977) (presumption of openness overcome by a showing

that the information is made confidential by another source of law or affects third party interests). The applicability of section 552.101 provides such a compelling reason.

Next, we note the United States Department of Education Family Policy Compliance Office (the "DOE") has informed this office that FERPA 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 purposes of our review in the open records ruling process under the Act.<sup>1</sup> 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 district has submitted an unredacted education record to this office. Because our office is prohibited from reviewing education records, we will not address the applicability of FERPA to the information at issue. Determinations under FERPA must be made by the educational authority in possession of the education record. Because we are unable to make a decision under FERPA, we will address your claimed argument for the submitted information.

The district explains it inadvertently disclosed the information at issue. Section 552.007 provides:

(a) This chapter does not prohibit a governmental body or its officer for public information from voluntarily making part or all of its information available to the public, unless the disclosure is expressly prohibited by law or the information is confidential under law.

(b) Public information made available under Subsection (a) must be made available to any person.

Gov't Code § 552.007. Once information has been voluntarily released to any member of the public, that same information may not subsequently be withheld from the public, unless its public disclosure is expressly prohibited by law because of a confidentiality statute. *See id.*; Open Records Decision Nos. 518 at 3 (1989), 490 at 2 (1988). Here, the district argues the inadvertently released information is confidential by statute. Thus, we will consider the district's assertion.

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. Section 552.101 encompasses information protected by a confidentiality statute. Section 21.355 of the Education Code provides, "A document evaluating the performance of a teacher or

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<sup>1</sup>A 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>.

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 that opinion, this office also concluded an administrator is someone who is required to hold and does hold a certificate required under chapter 21 of the Education Code and is administering at the time of his or her evaluation. *Id.* In addition, the court has concluded a written reprimand constitutes an evaluation for purposes of section 21.355 because “it reflects the principal’s judgment regarding [a teacher’s] actions, gives corrective direction, and provides for further review.” *North East Indep. Sch. Dist. v. Abbott*, 212 S.W.3d 364 (Tex. App.—Austin 2006, no pet.). After review of the submitted documents, we conclude the documents we marked are confidential under section 21.355. Therefore, pursuant to section 552.101 of the Government Code, the district must withhold these documents.

Next, we note the information includes information protected by the common law right of privacy, which is also encompassed by section 552.101. In *Industrial Foundation*, the Texas Supreme Court stated information is excepted from disclosure as private if (1) the information contains highly intimate or embarrassing facts the release of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The types of information considered intimate and embarrassing by the Texas Supreme Court included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. We have marked the private information the district must withhold.

Lastly, the information includes information that may be excepted from disclosure under section 552.117(a)(1) of the Government Code. Section 552.117(a)(1) excepts from disclosure the home addresses, home telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who request this information be kept confidential under section 552.024. Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Therefore, the district may only withhold the information we marked under section 552.117 on behalf of the current or former employees if they made requests for confidentiality under section 552.024 prior to the date on which the request for this information was made. The district may not withhold this information under section 552.117 if the employees did not make timely elections to keep the information confidential.

In summary, the district must withhold 1) the administrator evaluations we marked under section 21.355 of the Education Code, 2) the information we marked under common-law privacy, and 3) the personal employee information we marked if the current or former employees timely elected confidentiality. The district must release the remainder.

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](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,



Yen-Ha Le  
Assistant Attorney General  
Open Records Division

YHL/sdk

Ref: ID# 348144

Enc: Marked documents

c: Requestor  
(w/o enclosures)