



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 10, 2009

Ms. Laura C. Rodriguez
Walsh, Anderson, Brown, Aldridge & Gallegos, P.C.
Attorneys for Northside Independent School District
P.O. Box 460606
San Antonio, Texas 78246

OR2009-11122

Dear Ms. Rodriguez:

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# 351576.

The Northside Independent School District (the "district"), which you represent, received a request for information pertaining to a named individual. We understand you to have released some of the requested information. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.116, 552.117, 552.130, and 552.137 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. Section 552.101 encompasses other statutes, including section 6103(a) of title 26 of the United States Code. Prior decisions of this office have held that section 6103(a) of title 26 of the United States Code renders tax return information confidential. Attorney General Opinion H-1274 (1978) (tax returns); Open Records Decision Nos. 600 (1992) (W-4 forms). Section 6103(b) defines the term "return information" as:

a taxpayer's identity, the nature, source, or amount of his income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, 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 with respect to 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). Therefore, the district must withhold the submitted W-4 form at AG-0015 pursuant to section 552.101 of the Government Code in conjunction with section 6103(a) of title 26 of the United States Code.

Section 552.101 also encompasses section 1324a of title 8 of the United States Code, which 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). Release of the submitted I-9 form under the Act would be “for purposes other than for enforcement” of the referenced federal statutes. Accordingly, we find that the I-9 form at AG-0013 is confidential under section 552.101 of the Government Code and may only be released in compliance with the federal laws and regulations governing the employment verification system.

Next, you argue that portions of the documents marked AG-0009 through AG-0012 are excepted from disclosure under section 552.102(b) of the Government Code. Section 552.102(b) excepts from disclosure all information from 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). We agree that documents AG-0009 through AG-0012 consist of transcripts that are subject to section 552.102(b).

We note, however, that the requestor may be an authorized representative of the individual who is the subject of this request for information. As the named individual’s authorized representative, the requestor would have a right of access under section 552.023 of the Government Code to any information that the district would be required to withhold from the public to protect the individual’s privacy.¹ *See* Gov’t Code § 552.023(a). Section 552.102(b) protects personal privacy. *See id.* § 552.102(b). Thus, if the requestor

¹Section 552.023 provides that “[a] person or a person’s authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person’s privacy interests.” Gov’t Code § 552.023(a).

is the named individual's authorized representative, then information relating to the named individual may not be withheld from this requestor under section 552.102(b) of the Government Code. *See* Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself). However, if the requestor is not the authorized representative of the individual at issue, then with the exception of the employee's name, courses taken, and degree obtained, which must be released, the transcripts must be withheld pursuant to section 552.102(b).

Section 552.116 of the Government Code provides as follows:

(a) An audit working paper of an audit of the state auditor or the auditor of a state agency, an institution of higher education as defined by Section 61.003, Education Code, a county, a municipality, a school district, or a joint board operating under Section 22.074, Transportation Code, including any audit relating to the criminal history background check of a public school employee, is excepted from [required public disclosure]. If information in an audit working paper is also maintained in another record, that other record is not excepted from [public disclosure] by this section.

(b) In this section:

(1) "Audit" means an audit authorized or required by a statute of this state or the United States, the charter or an ordinance of a municipality, an order of the commissioners court of a county, a resolution or other action of a board of trustees of a school district, including an audit by the district relating to the criminal history background check of a public school employee, or a resolution or other action of a joint board described by Subsection (a) and includes an investigation.

(2) "Audit working paper" includes all information, documentary or otherwise, prepared or maintained in conducting an audit or preparing an audit report, including:

(A) intra-agency and interagency communications; and

(B) drafts of the audit report or portions of those drafts.

Gov't Code § 552.116. You state that the document at AG-0027 was prepared or maintained by the district in connection with the state mandated criminal background check. You inform us that section 22.0836 of the Education Code requires the district to conduct a background check on substitute teachers. *See* Educ. Code § 22.0836. Based on your representations and

our review of the information at issue, we conclude that AG-0027 consists of an audit working paper that the district may withhold under section 552.116 of the Government Code.

Section 552.117(a)(1) of the Government Code excepts from disclosure the current and former home addresses, telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024 of the Government Code. Gov't Code § 552.117(a)(1). Whether a particular piece of information is protected under 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). We note section 552.117 also protects personal privacy. You state, and provide documentation showing, that one of the employees at issue timely elected to keep her information confidential. However, we note the requestor may be the authorized representative of this individual. If the requestor is this individual's authorized representative, then the district may not withhold the information pertaining to this individual from the requestor under section 552.117 of the Government Code. *See* Gov't Code § 552.023(a). If the requestor is not the authorized representative of this individual, then the district must withhold the information you have marked, as well as the information we have marked, pertaining to this individual under section 552.117(a)(1) of the Government Code. We note the remaining information contains the personal information of other district employees. To the extent these remaining employees timely elected confidentiality, the district must withhold their marked personal information pursuant to section 552.117(a)(1). To the extent the remaining employees did not make timely elections, their information may not be withheld on this basis.

Section 552.130 of the Government Code excepts from disclosure information that "relates to . . . a motor vehicle operator's or driver's license or permit issued by an agency of this state [or] a motor vehicle title or registration issued by an agency of this state." Gov't Code § 552.130. This exception also protects personal privacy. Thus, if the requestor is the authorized representative of the person to whom the Texas driver's license and motor vehicle information belongs, he has a right of access to that information under section 552.023 of the Government Code. *See id.* § 552.023(a); ORD 481 at 4. Otherwise, the district must withhold the marked information under section 552.130 of the Government Code.

Lastly, you claim that some of the remaining information is excepted from disclosure under section 552.137, which requires a governmental body to withhold the e-mail address of a member of the general public, unless the individual to whom the e-mail address belongs has affirmatively consented to its public disclosure. *See id.* § 552.137 (a)-(b). You do not inform us that the owner of the e-mail address has affirmatively consented to its release. We note that section 552.137 also protects personal privacy. Therefore, if the requestor is the authorized representative of the owner of the e-mail address, he has a right of access to the e-mail address and it must be released. *Id.* § 552.023(a); ORD 481 at 4. If the requestor is not the authorized representative of the named individual, the district must withhold the

e-mail address you have marked under section 552.137, unless the owner has affirmatively consented to its release.

In summary, the district must withhold the submitted W-4 form at AG-0015 pursuant to section 552.101 of the Government Code in conjunction with section 6103(a) of title 26 of the United States Code. The I-9 form at AG-0013 is confidential under section 552.101 of the Government Code in conjunction with section 1324a of title 18 of the United States Code, and may only be released in compliance with the federal laws and regulations governing the employment verification system. The district may withhold the document marked AG-0027 under section 552.116 of the Government Code. If the requestor is not the authorized representative of the named individual, then the district must withhold (1) with the exception of the employee's name, courses taken, and degree obtained, the marked transcripts pursuant to section 552.102(b); (2) the information you have marked, in addition to the information we have marked, under section 552.117(a)(1); (3) the information you have marked under section 552.130 of the Government Code; and (4) the e-mail address you have marked under section 552.137, unless the named individual has affirmatively consented to its release. To the extent the remaining employees timely elected confidentiality, the district must withhold their marked personal information pursuant to section 552.117(a)(1). If the requestor is the named individual's authorized representative, then information relating to the named individual may not be withheld from this requestor under sections 552.102(b), 552.117, 552.130, and 552.137 of the Government Code. The remaining information must be released.

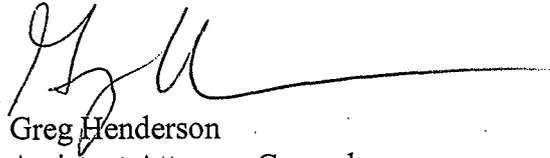
You also ask this office to issue previous determinations permitting the district to withhold (1) the grades and grade point average in college transcripts under section 552.102(b); (2) W-4 forms under section 552.101 of the Government Code in conjunction with section 6103 of title 26 of the United States Code; (3) I-9 forms under section 552.101 of the Government Code in conjunction with section 1324a of title 8 of the United States Code; (4) teacher evaluations under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code; (5) family member and home telephone and address information under section 552.117(a)(1) of the Government Code; (6) Texas driver's license and motor vehicle information under section 552.130 of the Government Code; and (7) credit card, debit card, charge card and access device numbers under section 552.136 of the Government Code. We decline to issue such a previous determination at this time.

Accordingly, 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 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,

A handwritten signature in black ink, appearing to read 'GH', with a long horizontal line extending to the right.

Greg Henderson
Assistant Attorney General
Open Records Division

GH/rl

Ref: ID#351576

Enc. Submitted documents

c: Requestor
(w/o enclosures)