



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 28, 2009

Ms. Mari M. McGowan  
Abernathy, Roeder, Boyd & Joplin, P.C.  
P.O. Box 1210  
McKinney, Texas 75070-1210

OR2009-15337

Dear Ms. McGowan:

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# 359587.

The Plano Independent School District (the "district"), which you represent, received a request for the current payroll database, the July 2009 check register, a list of internal investigations during a specified time period, a list of employees on administrative leave during a specified time period, and a list of employees referred to the Texas Education Agency ("TEA") during a specified time period with the reasons for the referrals. You indicate the district has provided or will provide the requested payroll and check register information to the requestor. You claim the submitted internal investigation, administrative leave, and referral reports are excepted from disclosure under section 552.101 of the Government Code. You also state the district notified several individuals of the request and of their right to submit arguments to this office as to why the submitted information pertaining to them should not be released.<sup>1</sup> See Gov't Code § 552.304 (providing interested party may submit comments stating why information should or should not be released). We have considered the exception 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." *Id.* § 552.101. This section encompasses information protected by other statutes, such as

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<sup>1</sup>As of the date of this letter, we have not received comments from any of the individuals.

section 21.355 of the Education Code, which provides that “[a] document evaluating the performance of a teacher or administrator is confidential.” Educ. Code § 21.355. This office has interpreted section 21.355 to apply to any document that evaluates, as that term is commonly understood, the performance of a teacher or an administrator. *See* Open Records Decision No. 643 (1996). In Open Records Decision No. 643, we determined 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* ORD 643 at 4. We also determined 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 assert the submitted spreadsheets regarding internal investigations, administrative leave, and TEA referrals are confidential under section 21.355. Upon review, however, we find you have not demonstrated, nor do the documents reflect, how the spreadsheets are evaluations of teachers or administrators. Accordingly, the district may not withhold any of the submitted information under section 552.101 of the Government Information Code in conjunction with section 21.355 of the Education Code.

Section 552.101 also encompasses laws that make criminal history record information (“CHRI”) confidential. CHRI generated by the National Crime Information Center (“NCIC”) or by the Texas Crime Information Center (“TCIC”) is confidential under federal and state law. Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 at 7 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* Although you claim some of the submitted information was received from the TCIC, you have not marked, or otherwise indicated, what parts of the submitted information may have been generated by the NCIC or TCIC. *See* Gov’t Code § 552.301(e)(2) (governmental body must label copy of requested information to indicate which exceptions apply to which parts of the information). Furthermore, the documents do not reflect that they were generated by the NCIC or TCIC. Accordingly, we find you have not demonstrated how any portion of the submitted information constitutes CHRI for purposes of chapter 411, and no portion of this information may be withheld on this basis.

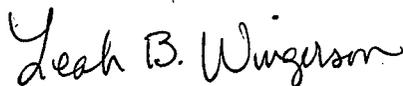
You assert some of the submitted information is protected by common-law privacy as compiled criminal history information. Section 552.101 also encompasses the doctrine of common-law privacy, which protects information if it (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex.1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be established. *Id.* at 681-82. A compilation of an individual’s criminal history is highly embarrassing information, the

publication of which would be highly objectionable to a reasonable person. *Cf. U. S. Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (when considering prong regarding individual's privacy interest, court recognized distinction between public records found in courthouse files and local police stations and compiled summary of information and noted that individual has significant privacy interest in compilation of one's criminal history). Moreover, we find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. However, this office has also found the public has a legitimate interest in information relating to employees of governmental bodies and their employment qualifications and job performance. *See Open Records Decision Nos. 470 at 4 (1987) (public has legitimate interest in job qualifications and performance of public employees), 444 at 5-6 (1986) (public has legitimate interest in knowing reasons for dismissal, demotion, promotion, or resignation of public employees), 423 at 2 (1984) (scope of public employee privacy is narrow).* In this instance, the requestor has not requested, nor does the submitted information contain, any individuals' compiled criminal histories. Furthermore, although some of the submitted information may be highly intimate or embarrassing, we find there is a legitimate public interest in this information because it pertains to investigations of the individuals in their employment capacities with the district. Accordingly, the doctrine of common-law privacy is not applicable in this instance, and none of the submitted information may be withheld under section 552.101 of the Government Code. As no other exceptions to disclosure have been claimed, the submitted 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](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, toll free, at (888) 672-6787.

Sincerely,



Leah B. Wingerson  
Assistant Attorney General  
Open Records Division

LBW/dls

Ref: ID# 359587

Enc. Submitted documents

c: Requestor  
(w/o enclosures)