



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 1, 2011

Ms. Ylise Janssen
Senior School Law Attorney
Austin Independent School District
1111 West Sixth Street
Austin, Texas 78703

OR2011-09386

Dear Ms. Janssen:

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# 422434.

The Austin Independent School District (the "district") received a request for letters, e-mails, or communications regarding complaints or the performance of a named district principal during a specified time period. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

You state the submitted information was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2011-07861 (2011). In that ruling, we concluded the following: (a) the district may withhold certain information under section 552.111 of the Government Code; (b) the district must withhold a certain marked cellular telephone number under section 552.117(a)(1) of the Government Code if the employee concerned timely elected confidentiality under section 552.024 of the Government Code and the employee concerned paid for the cellular telephone service with her own funds; and (c) the remaining information must be released. We note, however, since the issuance of Open Records Letter No. 2011-07861, the Texas legislature amended section 552.117 of the Government Code and section 21.355 of the Education Code. *See* Act of May 24, 2011, 82nd Leg., R.S., S.B. 1638, § 2 (to be codified as an amendment to Gov't Code § 552.117(a)); Act of May 25, 2011, 82nd Leg., R.S., H.B. 2971, § 1 (to be codified as Educ. Code § 21.355(a)). Thus, some of the laws on which the previous ruling was based have changed, and the district may not rely on Open Records Letter No. 2011-07861 as a previous determination. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous

determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). Accordingly, we will address your argument against the disclosure of 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 21.355 of the Education Code, which provides that “[a] document evaluating the performance of a teacher or administrator is confidential.” Act of May 25, 2011, 82nd Leg., R.S., H.B. 2971, § 1 (to be codified as Educ. Code § 21.355(a)). 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 at 3 (1996). In Open Records Decision No. 643, we determined for purposes of section 21.355, 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. *See* ORD 643 at 4.

You contend that the submitted information is confidential under section 21.355. You state, and provide documentation showing, that the submitted information pertains to a district employee who is a certified administrator. Upon review, however, we find that you have failed to demonstrate how the submitted information consists of “document[s] evaluating the performance of a teacher or administrator” as contemplated by section 21.355. Act of May 25, 2011, 82nd Leg., R.S., H.B. 2971, § 1 (to be codified as Educ. Code § 21.355(a)). Accordingly, we conclude the district may not withhold the submitted information based on section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code.

We note the submitted information contains information that may be subject to section 552.117(a)(1) of the Government Code.¹ Section 552.117(a)(1) excepts from disclosure the home address and telephone number, social security number, emergency contact information, and family member information of a current or former official or employee of a governmental body who requests that the information be kept confidential under section 552.024 of the Government Code. Act of May 24, 2011, 82nd Leg., R.S., S.B. 1638, § 2 (to be codified as an amendment to Gov’t Code § 552.117(a)). Section 552.117 also encompasses personal cellular telephone and pager numbers, provided that a governmental body does not pay for the cellular telephone or pager service. *See* Open Records Decision No. 506 at 5-6 (1988) (section 552.117 not applicable to cellular telephone

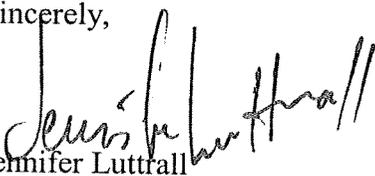
¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

numbers paid for by governmental body and intended for official use). 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 be withheld under section 552.117(a)(1) only 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. We have marked a cellular telephone number under section 552.117(a)(1) of the Government Code. The district must withhold this cellular telephone number under section 552.117(a)(1) if the employee concerned timely elected under section 552.024 to keep her information confidential and she paid for the cellular telephone service with her own funds. If the employee did not make a timely election, or the district paid for the cellular telephone service at issue, the cellular telephone number we have marked may not be withheld under section 552.117(a)(1). The district must release the remaining information.

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, toll free, at (888) 672-6787.

Sincerely,



Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/dls

Ref: ID# 422434

Enc. Submitted documents

c: Requestor
(w/o enclosures)