



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 19, 2013

Mr. Andrew B. Thompson
Assistant General Counsel
Office of Legal Services
Corpus Christi Independent School District
P.O. Box 110
Corpus Christi, Texas 78403-0110

OR2013-06427

Dear Mr. Thompson:

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# 484567.

The Corpus Christi Independent School District (the "district") received a request for seven categories of information pertaining to the requestor's client's employment with the district. You state the district has released some of the requested information. You state the district has redacted student identifying information pursuant to the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code.¹ You claim the submitted information is excepted from disclosure under sections 552.101 and 552.116 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

¹We note the United States Department of Education Family Policy Compliance Office (the "DOE") has informed this office that FERPA does not permit a state educational agency or institution to disclose to this office, without parental or an adult student's consent, unredacted, personally identifiable information contained in education records for the purpose of our review in the open records ruling process under the Act. See 34 C.F.R. § 99.3 (defining "personally identifiable information"). The DOE has determined that FERPA determinations must be made by the educational institution from which the education records were obtained. A copy of the DOE's letter to this office may be found on the Office of the Attorney General's website: <http://www.oag.state.tx.us/open/20060725usdoe.pdf>.

Initially, we note some of the submitted information is subject to section 552.022 of the Government Code, which provides in pertinent part:

(a) [T]he following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108 [of the Government Code];

...

(3) information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body; [and]

...

(17) information that is also contained in a public court record[.]

Gov't Code § 552.022(a)(1), (3), (17). The submitted information includes a completed investigation and completed evaluations subject to section 552.022(a)(1), executed contracts between the requestor's client and the district subject to section 552.022(a)(3), and a court-filed document subject to section 552.022(a)(17). This information must be released unless it is confidential under the Act or other law. Although you assert this information is excepted from disclosure under section 552.116 of the Government Code, this section is discretionary and does not make information confidential under the Act. *See* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). Therefore, the district may not withhold the information subject to section 552.022 under section 552.116. However, you also raise section 552.101 of the Government Code, which protects information made confidential under law. As such, we will address the applicability of section 552.101 to the information that is subject to section 552.022. Additionally, we will consider the applicability of sections 552.101 and 552.116 to the remaining information that is not subject to section 552.022.

Section 552.116 of the Government Code provides:

(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, a hospital 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 the requirements of

Section 552.021. If information in an audit working paper is also maintained in another record, that other record is not excepted from [required 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, the bylaws adopted by or other action of the governing board of a hospital district, 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(a)-(b). For purposes of section 552.116, a school district must establish that an audit is authorized by a resolution or other action of a board of trustees of the school district. You state the information at issue is related to an investigation conducted pursuant to section 21.041 of the Education Code and section 249.14 of title 19 of the Texas Administration Code. We note that section 21.041 of the Education Code and section 249.14 of title 19 of the Texas Administration Code authorize the Texas Education Agency, and not the district, to investigate an educator. *See* Educ. Code § 21.041; 19 T.A.C. ch. 249. You have provided no arguments that the information at issue constitutes working papers of an audit conducted by the district. Thus, we conclude that you have failed to establish that section 552.116 of the Government Code is applicable to any of the information at issue, and it may not be withheld under this exception.

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 laws that make criminal history record information ("CHRI") confidential. CHRI generated by the National Crime Information Center or by the Texas Crime Information Center is confidential under federal and state law. *Id.* § 411.083(a); Open Records Decision No. 565 (1990). 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. ORD 565 at 7. The

federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* Section 411.083 of the Government Code deems confidential CHRI the Department of Public Safety (“DPS”) maintains, except DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See* Gov’t Code § 411.083. A school district may obtain CHRI from DPS as authorized by section 411.097 and subchapter C of chapter 22 of the Education Code; however, a school district may not release CHRI except as provided by section 411.097(d). *See id.* § 411.097(d); Educ. Code § 22.083(c)(1) (authorizing school district to obtain from any law enforcement or criminal justice agency all CHRI relating to school district employee); *see also* Gov’t Code § 411.087. Section 411.087 authorizes a school district to obtain CHRI from the Federal Bureau of Investigation or any other criminal justice agency in this state. Gov’t Code § 411.087. Thus, any CHRI the district obtained from DPS or any other criminal justice agency in this state must be withheld under section 552.101 of the Government Code in conjunction with section 411.097(d) of the Government Code. *See* Educ. Code § 22.083(c)(1). Accordingly, the district must withhold the CHRI we have marked under section 552.101 in conjunction with chapter 411 of the Government Code.

Section 552.101 of the Government Code also encompasses section 21.355 of the Education Code. Section 21.355(a) provides, in part, “[a] document evaluating the performance of a teacher or administrator is confidential.” *Id.* § 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 administrator. *See* Open Records Decision No. 643 (1996). In that decision, we concluded 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.* at 4. Upon review, we find two of the submitted evaluations, which we have marked, consist of evaluations of a teacher. Therefore, provided the teacher was required to hold and did hold the appropriate certificate and was teaching at the time of the evaluations, the information that we have marked is generally confidential under section 21.355.

However, we note section 21.352(c) of the Education Code provides that “[e]ach teacher is entitled to receive a written copy of the evaluation on its completion.” Educ. Code § 21.352(c); *see id.* § 21.352(a) (prescribing appraisal process and performance criteria each school district shall use). In this instance, the requestor is the attorney for the teacher whose evaluations are at issue. Therefore, to the extent the evaluations we have marked are of the type that is contemplated by section 21.352, the requestor has a right of access to his client’s information under section 21.352(c). However, if the requestor does not have a right of access under section 21.352(c), then the teaching evaluations we have marked are confidential under section 21.355 of the Education Code and must be withheld under section 552.101 on this basis.

In summary, the district must withhold the CHRI we have marked under section 552.101 of the Government Code in conjunction with chapter 411 of the Government Code. Provided the teacher was required to hold and did hold the appropriate certificate and was functioning

as a teacher at the time of the evaluations at issue, to the extent the teaching evaluations we have marked are of the type contemplated by section 21.352 of the Education Code, the requestor has a right of access to this information and it must be released pursuant to section 21.352(c). If the requestor does not have a right of access under section 21.352(c), then, provided the teacher was required to hold and did hold the appropriate certificate and was teaching at the time of the teaching evaluations, the teaching evaluations we have marked must be withheld under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code. The remaining information must be released.²

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,



Lindsay E. Hale
Assistant Attorney General
Open Records Division

LEH/tch

Ref: ID# 484567

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²We note the information being released in this instance includes information that is confidential with respect to the general public. *See generally* Gov't Code § 552.023(a) (person or person's authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and is protected from public disclosure by laws intended to protect person's privacy interests). Therefore, if the district receives another request for this information from an individual other than this requestor or his client, the district must again seek a ruling from this office.