



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 23, 2013

Ms. Elisabeth D. Nelson
Law Offices of Robert E. Luna, P.C.
4411 North Central Expressway
Dallas, Texas 75205

OR2013-06645

Dear Ms. Nelson:

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# 484823.

The Garland Independent School District (the "district"), which you represent, received a request for information pertaining to a specified investigation and non-disclosure contract and a second request from a different requestor for the allegations and resulting decision regarding the second requestor in relation to the specified investigation. The district states it released some of the requested information to the first requestor. The district claims some of the submitted information is excepted from disclosure under sections 552.101, 552.117, and 552.135 of the Government Code. We have considered the claimed exceptions and reviewed the submitted information. We have also received and considered comments from the second requestor. *See Gov't Code* § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, we note a portion of the submitted information, which we have marked, is not responsive to the second request for information because it does not pertain to the allegations and resulting decision the second requestor seeks. The district need not release the information we have marked to the second requestor.

The second requestor, who is one of the subjects of an investigation of allegations of violations of the district's policies prohibiting discrimination, harassment, and hostile work environment, asserts she has a right of access to the submitted information under the Sixth

Amendment of the United States Constitution (the "Sixth Amendment"). The Sixth Amendment states:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

U.S. Const. Amend. VI. Thus, in our system of justice, the Sixth Amendment provides the accused in "all criminal prosecutions" is entitled to certain rights, including the right to counsel, the right to be informed of the nature and cause of the accusation, the right to compulsory process to obtain defense witnesses, and the opportunity to cross-examine witnesses for the prosecution. *See Faretta v. California*, 422 U.S. 806, 818 (1975) (stating right to be informed of nature and cause of accusation, right to counsel, right of confrontation, and right to compulsory process are basic to criminal justice system and fundamental rights); *see also Gideon v. Wainwright*, 372 U.S. 335 (1963) (right to counsel); *Pointer v. Texas*, 380 U.S. 400 (1965) (right of confrontation); *Washington v. Texas*, 388 U.S. 14 (1967) (right to compulsory process); *Barker v. Wingo*, 407 U.S. 514 (1972) (right to speedy trial). However, here, the second requestor is seeking information pursuant to the Act. As the Sixth Amendment guarantees the rights of an accused in criminal proceedings, it is not implicated in the context of a request for information under the Act, and, consequently, does not afford the second requestor a right of access to the submitted information.

Section 552.101 of the Government Code exempts 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, including section 21.355 of the Education Code. Section 21.355(a) provides "[a] document evaluating the performance of a teacher or administrator is confidential." Educ. Code § 21.355(a). Additionally, the court has concluded that a written reprimand constitutes an evaluation for purposes of section 21.355 as it "reflects the principal's judgment regarding [a teacher's] actions, gives corrective direction, and provides for further review." *Abbott v. N. E. Indep. Sch. Dist.*, 212 S.W.3d 364 (Tex. App.—Austin 2006, no pet.). 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. *See Open Records Decision No. 643 at 3 (1996)*. We also determined a "teacher" for purposes of section 21.355 means a person who (1) 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 (2) is engaged in the process of teaching, as that term is commonly defined, at the time of the evaluation. *See id.* at 4.

You assert some of the submitted information is confidential under section 21.355. However, the submitted information consists of summaries, witness statements, and correspondence pertaining to a hostile-work environment investigation conducted by the district, and it does not consist of an evaluation of any particular district employee performing the duty of a teacher or administrator. Upon review, we find you have not established any of the submitted information consists of “[a] document evaluating the performance of a teacher or administrator” as contemplated by section 21.355. *See* Educ. Code § 21.355(a). Accordingly, we conclude you have not established any of the submitted information is confidential under section 21.355, and the district may not withhold it under section 552.101 on that ground.

Section 552.117(a)(1) of the Government Code excepts from disclosure the home address and telephone number, social security number, 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. Gov’t Code § 552.117(a)(1). 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. You inform us the employees whose information is at issue timely elected under section 552.024 to keep their information confidential. However, section 552.117 protects personal privacy and the first requestor is one of the employees whose information is at issue. Therefore, the first requestor has a right of access to her own private information, and that information may not be withheld from her under section 552.117(a)(1). *See* Gov’t Code § 552.023 (person has special right of access to information held by governmental body that relates to person and that is protected from public disclosure by laws intended to protect person’s privacy interests); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). However, the district must withhold the remaining information we have marked from the first requestor under section 552.117(a)(1) of the Government Code. The district must withhold all of the information we have marked from the second requestor under section 552.117(a)(1) of the Government Code. However, the remaining information you have marked does not contain any information that is encompassed by section 552.117. Accordingly, the district may not withhold any portion of the remaining information you have marked under section 552.117 of the Government Code.

You also contend some of the remaining information is excepted under section 552.135 of the Government Code, which provides in relevant part the following:

- (a) “Informer” means a student or former student or an employee or former employee of a school district who has furnished a report of another person’s or persons’ possible violation of criminal, civil, or regulatory law to the school district or the proper regulatory enforcement authority.

(b) An informer's name or information that would substantially reveal the identity of an informer is excepted from [required public disclosure].

(c) Subsection (b) does not apply:

(1) if the informer is a student or former student, and the student or former student, or the legal guardian, or spouse of the student or former student consents to disclosure of the student's or former student's name; or

(2) if the informer is an employee or former employee who consents to disclosure of the employee's or former employee's name; or

(3) if the informer planned, initiated, or participated in the possible violation.

Gov't Code § 552.135(a)-(c). Because the legislature limited the protection of section 552.135 to the identity of a person who reports a possible violation of "law," a school district that seeks to withhold information under that exception must clearly identify to this office the specific civil, criminal, or regulatory law that is alleged to have been violated. *See id.* § 552.301(e)(1)(A). You state some of the remaining information identifies an employee who reported alleged racial anti-discrimination, harassment, and hostile-work environment violations by district employees in violation of federal anti-discrimination laws and district policy. Based on your representation and our review, we conclude the district must withhold the information we have marked under section 552.135 of the Government Code. However, the district has failed to demonstrate how any of the remaining information at issue reveals the identity of an informer for the purposes of section 552.135 of the Government Code. Therefore, the district may not withhold the remaining information on that ground.

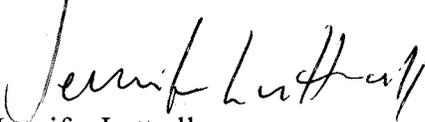
In summary, except for the first requestor's own personal information, the district must withhold the information we have marked from the first requestor under section 552.117(a)(1) of the Government Code. The district must withhold all of the information we have marked from the second requestor under section 552.117(a)(1) of the Government Code. The district must withhold the information we have marked under section 552.135 of the Government Code. The remaining 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, 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,

A handwritten signature in cursive script, appearing to read "Jennifer Luttrall".

Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/som

Ref: ID# 484823

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)