



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 4, 1997

Ms. JoAnn S. Wright
Walsh, Anderson, Underwood,
Schulze & Aldridge, P.C.
P.O. Box 168046
Irving, Texas 75016-8046

OR97-2641

Dear Ms. Wright:

On behalf of the Arlington Independent School District ("AISD"), you ask whether certain information is subject to required public disclosure under the Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 110578.

AISD received a request for various categories of information concerning a certain AISD employee. You assert that the requested information is excepted from required public disclosure based on sections 552.101, 552.107 and 552.111 of the Government Code.

Section 552.111 of the Government Code excepts from required public disclosure:

An interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency.

This office issued Open Records Decision No. 647 (1996), in which it concluded that a governmental body may withhold information under section 552.111 as attorney work product if the governmental body can show (1) that the information was created for civil trial or in anticipation of civil litigation under the test articulated in *National Tank v. Brotherton*, 851 S.W.2d 193 (Tex. 1993), or after a civil lawsuit is filed, and (2) that the work product consists of or tends to reveal an attorney's "mental processes, conclusions, and legal theories." Open Records Decision No. 647 (1996) at 5. We have reviewed your argument and the pertinent record submitted as Exhibit B. You have failed to show that the requested records were created for trial or in anticipation of litigation under the *National Tank* test. Accordingly, AISD may not withhold Exhibit B from disclosure as attorney work product under section 552.111.

Next, you contend that Exhibit C is excepted from public disclosure by section 552.107. Section 552.107(1) protects from disclosure information that reveals client

confidences to an attorney or that reveals the attorney's legal advice, opinion, and recommendation. *See* Open Records Decision No. 574 (1990). We agree that section 552.107(1) excepts from disclosure in its entirety the memorandum dated July 4, 1994 contained in Exhibit C.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Section 21.355 of the Education Code provides, "[a]ny document evaluating the performance of a teacher or administrator is confidential." This office recently interpreted this section to apply to any document that evaluates, as that term is commonly understood, the performance of a teacher or administrator. Open Records Decision No. 643 (1996). In that opinion, this office also concluded that a teacher is someone who is required to hold and does 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. The term teacher or administrator does not include teacher interns, teacher trainees, librarians, educational aides or counselors. *Id.* at 5. Based on the reasoning set out in Open Records Decision No. 643 (1996), we conclude that the submitted evaluations, with the exception of pages 6-7, contained in Exhibit D are confidential under section 21.355 of the Education Code. The district must release pages 6-7, subject to the markings as those documents are not confidential by law.¹

Section 552.114 applies to student records. However, when asked about the required public disclosure of student records, this office generally addresses Government Code section 552.026 and the Family Educational Rights and Privacy Act of 1974 ("FERPA"), 5 U.S.C. § 1232g.

¹As for the social security numbers, we note that social security numbers may be withheld in some circumstances under section 552.101 of the Government Code. A social security number or "related record" may be excepted from disclosure under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). *See* Open Records Decision No. 622 (1994) at 2-3. These amendments make confidential social security numbers and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See id.* We have no basis for concluding that any of the social security numbers in the file are confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure under section 552.101 of the Open Records Act on the basis of that federal provision. We caution, however, that section 552.353 of the Open Records Act imposes criminal penalties for the release of confidential information. Prior to releasing any social security number information, you should ensure that no such information was obtained or is maintained by the board pursuant to any provision of law, enacted on or after October 1, 1990. Additionally, we observe that section 552.024 of the Government Code provides that information is excepted from the requirements of section 552.021 if the employee elects not to disclose the information prior to any request for it. Section 552.117(1)(A), together with section 552.024, permits a government official or employee to choose whether to allow public access to their home addresses and telephone numbers. Thus, you must not release the home address or telephone number of an employee who, before this request was made, asked that this information be kept confidential.

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Janet H. Monteros
Assistant Attorney General
Open Records Division

JIM/gle

Ref.: ID# 110578

Enclosures: Marked documents

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