



May 26, 2000

Mr. Mike Atkins
McMahon, Tidwell, Hansen,
Atkins & Peacock, P.C.
4001 East 42nd, Suite 200
Odessa, Texas 79762

OR2000-2089

Dear Mr. Atkins:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 136526.

The Ector County Independent School District (the “district”), which you represent, received two requests for the personnel file of a former district teacher/administrator. You argue that the requested information is excepted from disclosure under sections 552.101 and 552.102 of the Government Code and section 21.355 of the Texas Education Code. You have released some of the information to the requesters, but have submitted to this office documents that you contend are excepted from public disclosure; you have labeled these documents as exhibits “B” and “C.” We have considered the exceptions you claim and reviewed the submitted information.

You argue the information contained in exhibit B is exempt from disclosure under section 552.101 of the Government Code in conjunction with section 21.355 of the Texas Education Code. Section 552.101 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 that “[a] document evaluating the performance of a teacher or administrator is confidential.” This office has interpreted this section 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).

Exhibit B contains performance appraisals and Professional Development Action Plans of the subject individual. You describe the individual as both a teacher and administrator. To be employed by a school district as a teacher or administrator, one must hold “an appropriate certificate or permit.” *See* Educ. Code § 21.003(a). Assuming the individual in question

held such a certificate or permit at the time of the creation of the documents in exhibit B, we conclude that the release of the documents is governed by section 21.355 of the Education Code and, accordingly, must be withheld from the public. –

Exhibit C consists of copies of the individual's college transcripts as well as his ExCET examination score report. You argue that this information is excepted under Section 552.102(b) of the Government Code. Section 552.102(b) excepts information from required public disclosure "if it is a transcript from an institution of higher education maintained in the personnel file of a professional public school employee," but does not exempt from disclosure the degree obtained or the curriculum listed on the transcript. You state that the requesters have been provided copies of the transcripts with the exception of the actual grades which have been redacted. We agree that you must withhold the college transcripts with the exception of the employee's name, degree obtained, and listed curriculum. *See* Open Records Decision No. 526 (1989). The ExCET examination report, however, is not "a transcript from an institution of higher education" and, therefore, may not be withheld under section 552.102(b).

We note that the college transcripts and the ExCET examination report contain the individual's social security number. The social security number is confidential if it was obtained or is maintained by the district pursuant to any provision of law enacted on or after October 1, 1990. *See* 42 U.S.C. § 405(c)(2)(C)(viii); Open Records Decision No. 622 (1994). In addition, the transcripts contain information which may be excepted from required disclosure by section 552.117(1) of the Government Code. Section 552.117 excepts from disclosure the home addresses, telephone numbers, social security numbers, and family information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024. Therefore, section 552.117 allows you to withhold this information if the named teacher requested that this information be kept confidential under section 552.024. *See* Open Records Decision Nos. 622 (1994), 455 (1987). You may not, however, withhold this information if the teacher made the request for confidentiality under section 552.024 after this request for information was made. Whether a particular piece of information is public must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989).

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the

full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.–Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Julie Reagan Watson
Assistant Attorney General
Open Records Division

JRW/nc

Ref: ID# 136526

Encl. Submitted documents

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