



March 7, 2001

Mr. William C. Bednar
Law Office of William C. Bednar
712 West 14th Street, Suite A
Austin, Texas 78701-1708

OR2001-0888

Dear Mr. Bednar:

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# 144808.

The Lake Travis Independent School District (the "district"), which you represent, received a request for "the results of any investigation" by the district of a named individual, the "personnel file" for the individual, and "any other documents related to" the district's hiring of the individual. You indicate that some of the information responsive to the request has been provided to the requestor. You further indicate that the named individual's "college transcripts" have been withheld pursuant to section 552.102(b) of the Government Code. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.102(a), 552.107(1), and 552.131 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

At the outset, we must address a procedural matter. The district was required to request a decision from this office and state the exceptions that apply no later than the tenth business day after the date the district received the request. Gov't Code § 552.301(b). You state the district received the request on December 11, 2000. The tenth business day after December 11 was December 27, 2000.¹ Although your request letter to this office is dated

¹You have not informed this office of the days in December 2000 that the district was not open for business. In calculating the tenth business day after the date the district received the request, we thus assume that the district offices were closed on Saturdays, Sundays, and on December 25 and 26, 2000.

December 27, 2000, it was not postmarked until December 28, 2000. *See* Gov't Code § 552.308. The information available to this office thus indicates the district did not timely comply with section 552.301(b).

If a governmental body fails to request a decision of this office as provided by section 552.301, the requested information "is presumed to be subject to required public disclosure and must be released unless there is a compelling reason to withhold the information." Gov't Code § 552.302; *see also see also Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.--Austin 1990, no writ) (governmental body must make a compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982). Normally, a compelling interest sufficient to overcome the section 552.302 presumption of openness is that some other source of law makes the information confidential or that third party interests are at stake. *See, e.g.*, Open Records Decision No. 150 at 2 (1977). The fact that information may be covered by the attorney client privilege under section 552.107(1), a discretionary exception, is not a compelling reason to withhold the responsive information.² *See* Open Records Decision No. 630 (1994). Therefore, none of the information may be withheld under section 552.107(1). Because sections 552.101, 552.102, and 552.131 can provide a compelling reason sufficient to overcome the section 552.302 presumption of openness, we next address these claimed exceptions.

You state the named individual's "college transcripts" are "clearly confidential" pursuant to section 552.102(b) of the Government Code. This provision excepts from required public disclosure "a transcript from an institution of higher education maintained in the personnel file of a professional public school employee" but the exception does not apply to "the degree obtained or the curriculum on [the] transcript[.]" Gov't Code § 552.102(b). Accordingly, the district must release to the requestor the information on the named individual's college transcripts that indicates any "degree obtained" and that discloses the individual's "curriculum." The district must withhold the remaining information on the named individual's college transcripts.

Section 552.102(a) of the Government Code excepts from public disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." You assert that some of the submitted documents implicate this provision. Section 552.102(a) is designed to protect public employees' personal privacy. The scope of section 552.102(a) protection, however, is very narrow. *See* Open Records Decision No. 336 (1982); *see also* Attorney General Opinion JM-36 (1983). The test for

²Discretionary exceptions are intended to protect only the interests of the governmental body, as distinct from exceptions which are intended to protect information deemed confidential by law or the interests of third parties. *See, e.g.*, Open Records Decision Nos. 592 at 8 (1991) (governmental body may waive section 552.104, information relating to competition or bidding); 549 at 6 (1990) (governmental body may waive informer's privilege); 522 at 4 (1989) (discretionary exceptions in general).

section 552.102(a) protection is the same as that for information protected by common law privacy under section 552.101: the information must contain highly intimate or embarrassing facts about a person's *private* affairs such that its release would be highly objectionable to a reasonable person *and* the information must be of no legitimate concern to the public. *Hubert v. Harte-Hanks Texas Newspapers, Inc.*, 652 S.W.2d 546, 550 (Tex. App. - Austin 1983, writ ref'd n.r.e.). The information at issue here, however, pertains to a former district employee's actions resulting in his separation from employment, and as such cannot be deemed to be of no legitimate concern to the public. *See* Open Records Decision No. 444 (1986) (public has legitimate interest in knowing reasons for dismissal, demotion, promotion, or resignation of public employees). Section 552.102 was not intended to protect the type of information at issue here.

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. For one of the submitted documents, you assert the applicability of section 21.355 of the Education Code. This provision states that "[a]ny document evaluating the performance of a teacher or administrator is confidential." 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. Open Records Decision No. 643 (1996). A teacher for purposes of section 21.355 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. Because the named individual apparently held such a certificate or permit at the time of the evaluation document at issue, we conclude that the document must be withheld in its entirety pursuant to section 552.101 in conjunction with section 21.355 of the Education Code.

The file also includes a "witness statement" for which you assert the applicability of section 552.131 of the Government Code (for certain information held by a school district). We find the witness statement is subject to section 261.201(a) of the Family Code, which provides in pertinent part as follows:

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

- (1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and
- (2) except as otherwise provided in this section, the files, reports, records, communications, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

The witness statement, taken by the Wharton County Sheriff's Department, was evidently obtained by you from the Wharton County District Attorney's Office. You then provided the district a copy of the statement. The document relates to an allegation of child abuse, and thus is within the scope of section 261.201 of the Family Code. You have not indicated that the district, the Wharton County Sheriff's Department, or the Wharton County District Attorney's Office has adopted a rule that governs the release of this type of information. Therefore, we assume that no such regulation exists. Given that assumption, the submitted witness statement is confidential in its entirety pursuant to section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). Accordingly, the district must withhold this information under section 552.101 of the Government Code.

We note that the submitted documents contain the social security number, home address, and home telephone number of the named individual, which we have marked. This information may be subject to required withholding under section 552.117(1) of the Government Code. Section 552.117(1) excepts from disclosure the home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024. Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Therefore, the district may only withhold information under section 552.117 on behalf of current or former officials or employees who made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. If the named individual timely elected under section 552.024 to keep confidential his social security number, home address, and home phone number, the school district must withhold the information we have marked. The school district may not withhold this information under section 552.117, however, if the former employees did not make a timely section 552.024 election to keep the information confidential.

Finally, in the event the social security number information we have marked is not confidential under section 552.117(1), we advise this information may nevertheless be subject to required withholding under section 552.101. 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). 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 on the basis of that federal provision. We caution, however, that section 552.352 of the Public Information 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 district pursuant to any provision of law, enacted on or after October 1, 1990.

In summary, pursuant to section 552.102(b), the district must release to the requestor the information on the named individual's college transcripts that indicates any "degree obtained" and that discloses the individual's "curriculum," but must withhold the remaining information on the transcripts. The submitted evaluation form we have marked must be withheld in its entirety pursuant to section 552.101 in conjunction with section 21.355 of the Education Code. The submitted witness statement we have marked must be withheld in its entirety pursuant to section 552.101 in conjunction with section 261.201 of the Family Code. The remaining documents are not excepted from disclosure and must be released to the requestor. However, if the individual made a timely section 552.024 election to keep confidential his social security number, home phone number, and home address, the district must first redact this information from the documents prior to their release. Otherwise, the information is not excepted from disclosure by section 552.117. In that case, the district may nevertheless be required to redact from the documents the individual's social security number under section 552.101, as provided above.

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).

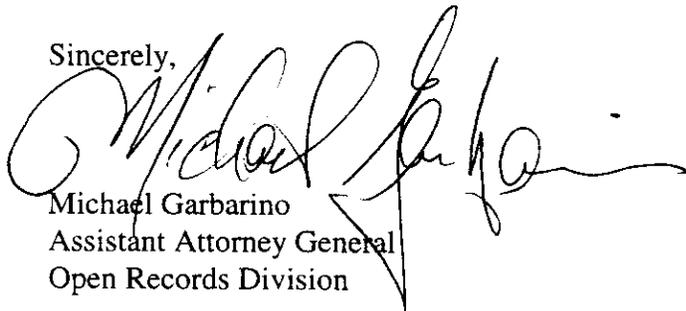
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

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,

A handwritten signature in black ink, appearing to read "Michael Garbarino". The signature is written in a cursive style and is positioned to the right of the typed name and title.

Michael Garbarino
Assistant Attorney General
Open Records Division

MG/seg

Ref: ID# 144808

Encl. Submitted documents

cc: Mr. Daniel Robbins
Houston Chronicle
P.O. Box 4260
Houston, Texas 77210
(w/o enclosures)