



March 27, 2001

Mr. Mark P. Tilley
Powell & Leon, L.L.P.
808 West Avenue
Austin, Texas 78701-2208

OR2001-1191

Dear Mr. Tilley:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 145357.

The Quinlan Independent School District (the "district"), which you represent, received a request for copies of documents contained in the personnel file of principal Gregg Weiss. You state that the district has released some responsive information to the requestor. You contend, however, that other responsive information is excepted from required public disclosure pursuant to sections 552.101 and 552.117 of the Government Code and section 21.355 of the Texas Education Code. We have considered the district's claimed exceptions and reviewed the submitted sample of information.¹

First, we address your letter of February 19, 2001, regarding a letter you received from the requestor subsequent to your seeking an opinion from this office with respect to his initial request. In his letter to you, the requestor requests a copy of your January 19, 2001 letter to this office and asserts that, because he was not provided a copy of this letter within ten days of his initial request, the requested information is presumed to be public information pursuant to section 552.302. You state that you notified the requestor that you had requested

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

an opinion from this office within the ten days as provided under section 552.301 and that you have since provided the requestor with a copy of your January 19 letter to this office.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to provide the requestor with the information required by section 552.301(d) results in the legal presumption that the information is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.--Austin 1990, no writ) (governmental body must make 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 is that some other source of law makes the information confidential or that third party interests are at stake. Open Records Decision No. 150 at 2 (1977). Because the applications of sections 552.101 and 552.117 of the Government Code are compelling reasons to overcome the presumption of openness, we will address your arguments for withholding this information without deciding whether or not you complied with the requirements of section 552.301(d).

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 made confidential by other statutes. Section 21.355 of the Education Code provides that "[a]ny 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. Open Records Decision No. 643 (1996). In that opinion, this office also concluded that an "administrator" is someone who is required to hold and does hold a certificate or permit required under chapter 21 of the Education Code and is performing the functions of an administrator at the time of his or her evaluation. *Id.* at 4. Assuming the school principal in question held such a certificate or permit at the time of the evaluations at issue, we conclude that his performance evaluations must be withheld from the public in their entirety pursuant to section 21.355 of the Education Code. We note that included with the submitted documents is a job description that does not in any way evaluate the performance of a teacher or administrator. This document, which has been marked for your convenience, is not excepted from public disclosure under section 21.355 of the Education Code and must be released to the requestor.

You state that responsive documents have been forwarded to the requestor with information relating to the home address, home telephone number, and social security number of the employee in question redacted pursuant to section 552.117 of the Government Code. Section 552.117 of the Government Code excepts from disclosure the home addresses, 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 in accordance with 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). The district must withhold this type of information pursuant to section 552.117 only to the extent that the respective employee elected to keep this information confidential prior to the district's receipt of the current records request.

We note that a social security number is excepted from required public disclosure under section 552.101 of the Government Code in conjunction with 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), *if it was obtained or is maintained by a governmental body pursuant to any provision of law enacted on or after October 1, 1990*. *See* Open Records Decision No. 622 (1994). It is not apparent to us that the social security numbers contained in the records at issue were obtained or are maintained by the district pursuant to any provision of law enacted on or after October 1, 1990. You have cited no law, nor are we aware of any law, enacted on or after October 1, 1990, that authorizes the district to obtain or maintain a social security number. Therefore, we have no basis for concluding that the social security number at issue was obtained or is maintained pursuant to such a statute and is, therefore, confidential under section 405(c)(2)(C)(vii)(I). We caution the district, however, that section 552.352 of the Government Code imposes criminal penalties for the release of confidential information. Prior to releasing the social security number, the district should ensure that the number was not obtained or is maintained by the district pursuant to any provision of law enacted on or after October 1, 1990.

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,



Karen A. Eckerle
Assistant Attorney General
Open Records Division

KAE/seg

Ref: ID# 145357

Encl: Submitted documents

cc: Mr. Daniel A. Ortiz
Ortiz & Associates
715 West Abram
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(w/o enclosures)