



August 3, 2001

Ms. Cheryl T. Mehl
Schwartz & Eichelbaum, P.C.
4201 West Parmer Lane, Suite 100
Austin, Texas 78727

OR2001-3373

Dear Ms. Mehl:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 150295.

The Roosevelt Independent School District (the "district"), which you represent, received a request for personnel and other records relating to a former employee. You claim that some of the requested information is excepted from disclosure under sections 552.101 and 552.102 of the Government Code. We assume that the district has released any other records that are responsive to this request. If not, then the district must do so at this time. *See Gov't Code §§ 552.006, .301, .302; Open Records Decision No. 664 (2000).* We have considered the exceptions you raise and have reviewed the information you submitted.¹

We first note that some of the submitted records fall within the scope of section 552.022 of the Government Code. Section 552.022 provides in relevant part:

(a) Without limiting the amount or kind of information that is public information under this chapter, *the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:*

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body[.]

Gov't Code § 552.022(a)(1) (emphasis added). You assert that the responsive records that are encompassed by section 552.022(a)(1) are confidential under section 552.101 of the Government Code.

¹We note that you also ask this office to issue previous determinations with respect to the information at issue. *See Gov't Code § 552.301(a); Open Records Decision No. 673 (2001).* We decline to do so at this time.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This exception protects information that is deemed to be confidential under another statute. Chapter 261 of the Family Code governs investigations of child abuse or neglect. Section 261.201 provides in relevant part:

(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, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201(a). You inform this office that the information submitted as Exhibit 3 concerns an investigation by the Texas Department of Protective and Regulatory Services ("DPRS"). You explain that DPRS provided this information to the district under section 261.406 of the Family Code. *See id.* § 261.406(a)-(b). We agree that the contents of Exhibit 3 represent files, reports, records, communications, and working papers used or developed in an investigation under chapter 261 of the Family Code or in providing services as a result of an investigation. We therefore conclude that Exhibit 3 is confidential in its entirety under section 261.201 of the Family Code and must be withheld from the requestor under section 552.101 of the Government Code.

You assert that the records of evaluations submitted as Exhibit 5 are confidential under section 21.355 of the Education Code. Section 21.355 of the Education Code provides that "[a] document evaluating the performance of a teacher or administrator is confidential." Educ. Code § 21.355. 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 an administrator. *See* Open Records Decision No. 643 at 3 (1996). In that same decision, we also determined that the word "teacher," for the purposes of section 21.355, is a person who 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 who is engaged in the process of teaching, as that term is commonly defined, at the time of the evaluation. *See* ORD 643 at 4. You indicate that the submitted evaluations concern a certificated teacher. Assuming that this is the case, we agree that Exhibit 5 is confidential in its entirety under section 21.355 of the Education Code. Therefore, the district also must withhold Exhibit 5 from the requestor under section 552.101 of the Government Code.

You also claim an exception under section 552.101 for a criminal history report from the Texas Department of Public Safety (the "DPS"). Criminal history record information ("CHRI") is confidential under federal law and subchapter F of chapter 411 of the Government Code. Federal regulations prohibit the release of CHRI maintained in state and local CHRI systems to the general public. *See* 28 C.F.R. § 20.21(c)(1) ("Use of criminal history record information disseminated to noncriminal justice agencies shall be limited to the purpose for which it was given.") and (c)(2) ("No agency or individual shall confirm the existence or nonexistence of criminal history record information to any person or agency that would not be eligible to receive the information itself."). Section 411.083 of the Government Code provides that any CHRI maintained by the DPS is confidential. *See* Gov't Code § 411.083(a). Similarly, CHRI obtained from the DPS pursuant to statute also is confidential and may be disclosed only in very limited instances. *Id.* § 411.084; *see also id.* § 411.087 (restrictions on disclosure of CHRI obtained from DPS also apply to CHRI obtained from other criminal justice agencies), .097(c) (providing for confidentiality of CHRI obtained from DPS by a school district). We agree that the criminal history report submitted as Exhibit 4 is confidential under subchapter F of chapter 411 of the Government Code. Therefore, the district also must withhold Exhibit 4 from the requestor under section 552.101 of the Government Code.

Lastly, you assert that portions of the college transcripts submitted as Exhibit 2 are excepted from disclosure under section 552.102(b) of the Government Code. Section 552.102(b) excepts from disclosure "a transcript from an institution of higher education maintained in the personnel file of a professional public school employee." This exception further provides, however, that "the degree obtained or the curriculum on a transcript in the personnel file of the employee" are not excepted from disclosure. You state that you have provided the requestor with the information in the transcripts relating to the degree obtained and the courses taken. We therefore agree that the district must withhold the remaining information in the transcripts under section 552.102(b). We note that Exhibit 2 also contains an additional document that is not part of the former employee's college transcripts. As you claim no exception to the disclosure of this document, it must be released.

In summary, the information provided to the district by DPRS is confidential under section 261.201 of the Family Code; the teacher evaluations are confidential under section 21.355 of the Education Code; and the criminal history report is confidential under subchapter F of chapter 411 of the Government Code. The district must withhold all of this information under section 552.101 of the Government Code. The information in the college transcripts that has not been released must be withheld under section 552.102(b). The district must release the additional document contained in Exhibit 2.

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).

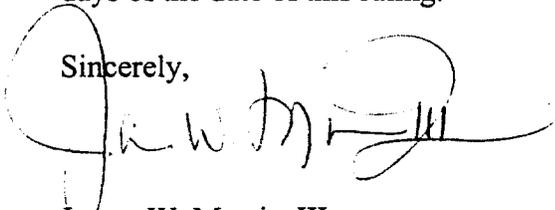
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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 "James W. Morris, III". The signature is written in a cursive style with a large initial "J" and a long horizontal stroke at the end.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/sdk

Ref: ID# 150295

Enc: Submitted documents

c: Ms. Tammy Seymour
214 Cimarron
Lubbock, Texas 79403
(w/o enclosures)