



May 2, 2002

Ms. Carrie D. Helmcamp  
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816 Congress Avenue, Suite 800  
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OR2002-2291

Dear Ms. Helmcamp:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 162263.

The Llano Independent School District (the "district"), which you represent, received a written request from another school district for all "public information" in a former district teacher's personnel file.<sup>1</sup> You state that the district has released much of the requested information. You contend, however, that the remaining requested information is excepted from required public disclosure pursuant to sections 552.101 and 552.102 of the Government Code.

Section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, *statutory*, or by judicial decision." (Emphasis added.) You first contend that certain documents are excepted from public disclosure pursuant to section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code, which 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

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<sup>1</sup> Because the records request is couched strictly in terms of the Public Information Act, this ruling does not address the extent to which the requestor would have a right of access to this information through an intergovernmental transfer of the information. See generally Attorney General Opinions H-917 at 1 (1976), H-242 at 4 (1974); Open Records Decision No. 661 at 3 (1991).

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. Assuming such is the case here, we agree that the documents Bates stamped 102 - 110 consist of teacher evaluations made confidential under section 21.355 of the Education Code and thus must be withheld pursuant to section 552.101 of the Government Code.

Section 159.002 of the Medical Practice Act (the "MPA"), which is codified at subtitle B of title 3 of the Occupations Code, provides in pertinent part:

(b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.

After reviewing the submitted "Medical Examination Report" Bates stamped 114, we agree that this document constitutes a "medical record" for purposes of the MPA. The MPA includes provisions that govern the disclosure of information that it encompasses. *See Occ. Code* §§ 159.003, 159.004, 159.005, 159.006. The district therefore may release this document only in accordance with the MPA.

Also among the records at issue are the teacher's W-4 forms. These forms, Bates stamped 115 and 116, constitute confidential "tax return information" and as such must be withheld in their entirety pursuant to federal law. *See* 26 U.S.C. § 6103.

You also contend that some of the submitted records contain information that must be withheld from the public pursuant to the Family Educational Rights and Privacy Act of 1974 ("FERPA"), 20 U.S.C. § 1232g. In this regard, section 552.026 of the Government Code provides as follows:

This chapter does not require the release of information contained in education records of an educational agency or institution, except in conformity with [FERPA].

FERPA provides that no federal funds will be made available under any applicable program to an educational agency or institution that releases personally identifiable information, other than directory information, contained in a student's education records to anyone but certain enumerated federal, state, and local officials and institutions, unless otherwise authorized by the student. *See* 20 U.S.C. § 1232g(d). "Education records" are those records that contain information directly related to a student and are maintained by an educational agency or institution or by a person acting for such agency or institution. *Id.* § 1232g(a)(4)(A). Information must be withheld from required public disclosure under FERPA only to

the extent "reasonable and necessary to avoid personally identifying a particular student." Open Records Decision Nos. 332 (1982), 206 (1978). We agree that the documents Bates stamped 145 - 161 constitute "education records" to the extent these records contain information about identifiable students. These records must be released with the students' identities redacted.

We now address your arguments regarding the applicability of section 552.102 of the Government Code. Section 552.102(a) excepts from public disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." 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 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.).

Information regarding a financial transaction between an individual and a governmental body is a matter of legitimate public interest; thus, the doctrine of common-law privacy does not generally protect from required public disclosure information regarding such a transaction. *See* Open Records Decision Nos. 590 at 3 (1991), 523 at 3-4 (1989). Consequently, the fact that the teacher participated in a group insurance plan funded by the district and the amount of any payroll deduction therefor is not information that is excepted from disclosure. Open Records Decision No. 600 at 9 (1992). The district therefore must release the information that you have highlighted in the documents Bates stamped 162 - 165.

On the other hand, some of the records you submitted to this office reveal the teacher's designation of a beneficiary, which reflects a personal financial decision that is protected by common-law privacy. *See* Open Records Decision No. 600 at 11 (1992). We agree the district must withhold the documents Bates stamped 117 and 166 pursuant to common law privacy.

You also contend that the teacher's college transcripts are excepted from public disclosure pursuant to section 552.102(b) of the Government Code, except those portions of the transcripts that reveal the teacher's name, degrees obtained, and courses taken. Section 552.102(b) of the Government Code protects from public disclosure:

a transcript from an institution of higher education maintained in the personnel file of a professional public school employee, except that this section does not exempt from disclosure the degree obtained or the curriculum on a transcript in the personnel file of the employee.

Accordingly, we conclude that the district may release only those portions of the transcripts that reveal the teacher's name, degree obtained, and courses taken. The remaining information on the college transcripts must be withheld pursuant to section 552.102(b).

Finally, we note that some of the submitted documents contain information that may come within the protection of section 552.117(1) of the Government Code, which requires that the district withhold the home address, home telephone number, social security number, and family information of current or former district employees who request that this information be kept confidential in accordance with section 552.024 of the Government Code. You have not provided evidence to this office that the teacher elected under section 552.024 to make his personal information confidential prior to the district's receipt of the current records request. Consequently, the district must redact these types of information from the documents that are otherwise subject to release only if the teacher in fact elected to make this information confidential prior to the district's receipt of the current records request. *See* Open Records Decision No. 530 at 5 (1989) (whether particular information is protected by section 552.117(1) must be determined at time request for it is made).

The remaining submitted information not discussed above must be released to the requestor. 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

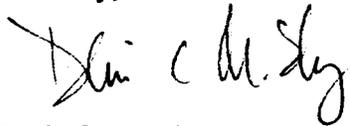
should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

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 Texas Building and Procurement 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,



Denis C. McElroy  
Assistant Attorney General  
Open Records Division

DCM/RWP/sdk

Ref: ID# 162263

Enc: Submitted documents

c: Ms. Linda Grisham  
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(w/o enclosures)