OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

June 12, 2003

Mr. Dan Junell
General Counsel
State Board for Educator Certification
4616 West Howard Lane, Suite 120
Austin, Texas 78728

OR2003-4054

Dear Mr. Junell:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 183488.

The State Board for Educator Certification ("SBEC") received a request for certain telephone and fax lists, telephone billing records, and "any and all legally accessible documents which discuss one or more reasons why" a former named SBEC employee resigned or was terminated. You seek only to withhold the former named SBEC employee's social security number under section 552.117 of the Government Code. We have considered your argument and have reviewed the submitted information.

First, we note that you have not submitted to this office, nor do you inform us that you have released to the requestor, any of the remaining requested information. Therefore, to the extent it exists, you must immediately release such information to the requestor if you have not already done so. *See* Gov't Code §§ 552.006, .301(a), .302.

Next, we note that, pursuant to section 552.301(e) of the Government Code, a governmental body is required to submit to this office within fifteen business days of receiving an open records request (1) general written comments stating the reasons why any stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or

representative samples, labeled to indicate which exceptions apply to which parts of the documents. You did not, however, submit to this office a copy of the requested information within the 15 business-day deadline.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to submit to this office the information required in section 552.301(e) 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). Compelling reasons exist when the information is made confidential by law or affects the interest of a third party. Open Records Decision No. 630 at 3 (1994). Here, you raise section 552.117(1) of the Government. The application of section 552.117 presents a compelling reason to overcome the presumption of openness. Therefore, we will consider your argument under this exception.

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(1) must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). You have provided this office with a copy of the named former employee's election made under section 552.024, dated prior to SBEC's receipt of the records request, requesting confidentiality for her social security number. Therefore, SBEC must withhold the social security number that you have submitted under section 552.117(1) of the Government Code.

Finally, you ask that this ruling serve as a previous determination that "the present and former social security numbers of current or former officials or employees of [SBEC] who have timely requested that this information be kept confidential under section 552.024" be excepted from disclosure under section 552.117. We decline to issue such a previous determination at this time.

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).

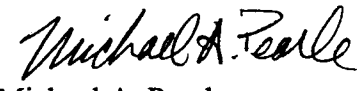
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following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



Michael A. Pearle
Assistant Attorney General
Open Records Division

MAP/jh

Ref: ID# 183488

Enc. Submitted documents

cc: Mr. Tom Purcell
P.O. Box 1167
Keller, Texas 76244
(w/o enclosures)