



OFFICE *of the* ATTORNEY GENERAL  
GREG ABBOTT

August 1, 2003

Ms. Karen L. Johnson  
Powell & Leon, LLP  
1706 West Sixth Street  
Austin, Texas 78703-4703

OR2003-5370

Dear Ms. Johnson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 185238.

The Pittsburg Independent School District (the "district"), which you represent, received a request for employment records, complaints and grievances, employment exit information, and prior employment history related to a named former district employee. You state that most of the requested information will be provided to the requestor. You claim, however, that portions of the remaining requested information are excepted from disclosure under sections 552.026, 552.101, 552.102, 552.114, and 552.117 of the Government Code, and under the Federal Educational Rights and Privacy Act of 1974 ("FERPA"). We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that some of the records at issue are medical records, access to which is governed by the Medical Practice Act (the "MPA"), chapter 159 of the Occupations Code. Section 159.002 of the MPA provides:

(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.

(c) A person who receives information from a confidential communication or record as described by this chapter, other than a person listed in Section 159.004 who is acting on the patient's behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

The medical records must be released upon the patient's signed, written consent, provided that the consent specifies (1) the information to be covered by the release, (2) reasons or purposes for the release, and (3) the person to whom the information is to be released. Occ. Code §§ 159.004, .005. Section 159.002(c) also requires that any subsequent release of medical records be consistent with the purposes for which the governmental body obtained the records. Open Records Decision No. 565 at 7 (1990). Medical records may be released only as provided under the MPA. Open Records Decision No. 598 (1991). We have marked the medical records subject to the MPA.

We next note that you have redacted some information within the submitted documents pursuant to 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's parent. See 20 U.S.C. § 1232g(b)(1). "Education records" means 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). This office generally applies the same analysis under section 552.114 of the Government Code and FERPA. Open Records Decision No. 539 (1990).

Section 552.114 excepts from disclosure student records at an educational institution funded completely or in part by state revenue. Section 552.026 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 the Family Educational Rights and Privacy Act of 1974, Sec. 513, Pub. L. No. 93-380, 20 U.S.C. Sec. 1232g.

In Open Records Decision No. 634 (1995), this office concluded that (1) an educational agency or institution may withhold from public disclosure information that is protected by FERPA and excepted from required public disclosure by sections 552.026 and 552.101 without the necessity of requesting an attorney general decision as to those exceptions, and (2) an educational agency or institution that is state-funded may withhold from public disclosure information that is excepted from required public disclosure by section 552.114 as a "student record," insofar as the "student record" is protected by FERPA, without the necessity of requesting an attorney general decision as to that exception. Information must be withheld from required public disclosure under FERPA only to the extent "reasonable and necessary to avoid personally identifying a particular student." See Open Records Decision Nos. 332 (1982), 206 (1978). This includes information that directly identifies a student, as well as information that, if released, would allow the student's identity to be easily traced. See Open Records Decision No. 224 (1979) (finding student's handwritten comments making identity of student easily traceable through handwriting, style of expression, or

particular incidents related in comments protected under FERPA). Thus, we agree that, to the extent the information you have redacted identifies particular students, it must not be disclosed unless the district has authority to release the information under the federal law. We note, however, that one of the documents you have marked as confidential under FERPA does not identify any student. This document, which we have marked, may not be withheld under FERPA and must be released to the requestor.

We next address your argument that the submitted evaluations are excepted from disclosure under section 552.101 of the Government Code. 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. Section 21.355 of the Education Code provides, "A document evaluating the performance of a teacher or administrator is confidential." This office 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 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.* Similarly, an administrator is someone who is required to hold and does hold a certificate required under chapter 21 of the Education Code and is administering at the time of his or her evaluation. *Id.* You do not inform us that the named individual was a teacher or administrator at the time of all of the submitted evaluations. Based on the reasoning set out in Open Records Decision No. 643, we conclude that if the individual was a teacher or administrator at the time of the evaluations, then such evaluations are confidential under section 21.355 of the Education Code, and must be withheld under section 552.101 of the Government Code. In the event that the individual was not a teacher or administrator at the time of his evaluations, section 21.355 of the Education Code is inapplicable, and any such evaluation may not be withheld under section 552.101. We note that one of the documents you seek to withhold under this exception entitled "High School Principal's Contract Bases for Conditional Extension" is a letter of reprimand and does not evaluate the performance of a teacher or administrator for purposes of section 21.355 of the Education Code. Thus, this document is not confidential under section 21.355 and must be released.

You also raise section 552.102 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. Thus, except for the information that reveals the degree obtained and the courses taken, the district must withhold the submitted transcripts under section 552.102(b).

Section 552.117(a)(1) of the Government Code 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). Thus, if the former district employee whose personal information is at issue elected under section 552.024 to keep this information confidential prior to the district's receipt of the present request, you must withhold such information, which you have marked, and the additional information we have marked, under section 552.117(a)(1) of the Government Code. You may not withhold this information under section 552.117 if the former employee did not make a timely election to keep such information confidential under section 552.024.

Next, we note that the submitted information contains W-4 forms. A W-4 form is confidential under section 6103(a) of title 26 of the United States Code.<sup>1</sup> Therefore, the district must withhold the submitted W-4 forms under section 552.101 of the Government Code in conjunction with federal law.

Finally, we note that the submitted documents contain information made confidential by section 552.130 of the Government Code. Section 552.130 provides in relevant part:

(a) Information is excepted from the requirements of Section 552.021 if the information relates to:

(1) a motor vehicle operator's or driver's license or permit issued by an agency of this state[.]

Therefore, you must withhold the Texas driver's license numbers and expiration dates, which we have marked, under section 552.130.

To summarize, we conclude: (1) we have marked the medical records which may be released only as provided under the MPA, (2) with the exception of one document that we have marked for release, you must withhold the student-identifying information you have marked under FERPA, (3) with the exception of the "High School Principal's Contract Bases for Conditional Extension," you must withhold the documents you have marked as confidential under section 21.355 of the Education Code, provided the named individual was a teacher or administrator at the time of such evaluations, (4) except for the information that reveals the degree obtained and the courses taken, the district must withhold the submitted transcripts under section 552.102(b) of the Government Code, (5) if the former district employee whose personal information is at issue elected under section 552.024 to keep this information confidential prior to the district's receipt of the present request, you must withhold such information, which you have marked, and the additional information we have marked, under section 552.117(a)(1) of the Government Code, (6) you must withhold the

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<sup>1</sup>We note that return information of any taxpayer may be disclosed to any person that the taxpayer designates. *See* 26 U.S.C. § 6103(c).

submitted W-4 forms as information made confidential by federal law, and (7) you must withhold the Texas driver's license numbers and expiration dates under section 552.130 of the Government Code. The remaining submitted information 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 Dep't of Pub. 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,

A handwritten signature in black ink, appearing to read "Sarah Swanson", with a long horizontal flourish extending to the right.

Sarah I. Swanson  
Assistant Attorney General  
Open Records Division

SIS/lmt

Ref: ID# 185238

Enc. Submitted documents

c: Mr. Bruce Brookshier  
P. O. Box 182  
Diana, Texas 75640  
(w/o enclosures)