



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 5, 2003

Ms. Jennifer L. Hall  
Escamilla & Poneck, Inc.  
100 Travis Park Plaza Building  
711 Navarro  
San Antonio, Texas 78205

OR2003-8743

Dear Ms. Hall:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 192229.

The United Independent School District (the "district"), which you represent, received a request for a copy of the interview scoring sheets and all comments or notes written by the interview committee during the requestor's interview with the district, as well as the credentials of the selected applicant and preferred qualifications. You state that you will release the requested qualifications to the requestor. You claim that the remaining requested information is excepted from disclosure under sections 552.101, 552.102, and 552.122 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.122(b) excepts from disclosure test items developed by a licensing agency or governmental body. In Open Records Decision No. 626 (1994), this office determined that the term "test item" in section 552.122 includes any standard means by which an individual's or group's knowledge or ability in a particular area is evaluated, but does not encompass evaluations of an employee's overall job performance or suitability. Whether information falls within the section 552.122 exception must be determined on a case-by-case basis. Open Records Decision No. 626 at 6 (1994). Traditionally, this office has applied section 552.122 where release of "test items" might compromise the effectiveness of future examinations. *Id.* at 4-5; *see also* Open Records Decision No. 118 (1976). Section 552.122 also protects the answers to test questions when the answers might reveal the questions themselves. *See* Attorney General Opinion JM-640 at 3 (1987); Open Records Decision No. 626 at 8 (1994).

After reviewing your arguments and the information you seek to withhold under this exception, however, we find that the district has not demonstrated that any of the interview questions at issue here constitute test items for purposes of section 552.122. Therefore, the district may not withhold any portion of Exhibit B under section 552.122, and this information must be released.

We now turn to your arguments for Exhibit C. 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 submitted 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).

We note that the employee's Examination for the Certification of Educators in Texas ("ExCET") score report is not "a transcript from an institution of higher education" and, therefore, may not be withheld under section 552.102(b). *Cf.* Open Records Decision No. 526 (1989) (section 552.102(b) excepts certain portions of professional public school employees' college transcripts from required public disclosure); *see generally* Open Records Decision Nos. 444 at 5- 6 (1986) (public employee's qualifications and performance are subject to a legitimate public interest); 441 at 3 (1986) (identities of teachers who did not pass the TECAT examination are matter of legitimate public interest). We determine that the district may not withhold the submitted ExCET score report under section 552.102 of the Government Code.

You also argue that the remaining information in Exhibit C is excepted under sections 552.101 and 552.102 of the Government Code in conjunction with the individual's privacy interests. Section 552.102(a) excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Gov't Code § 552.102(a). In *Hubert v. Harte-Hanks Texas Newspapers*, 652 S.W.2d 546 (Tex. App.—Austin 1983, writ ref'd n.r.e.), the court ruled that the test to be applied to information claimed to be protected under section 552.102(a) is the same as the test formulated by the Texas Supreme Court in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976) for information claimed to be protected under the doctrine of common-law privacy as incorporated by section 552.101 of the Public Information Act (the "Act"). *See Industrial Foundation*, 540 S.W.2d at 683-85.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," and

encompasses the doctrine of common-law privacy, which protects information if it (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Industrial Foundation*, 540 S.W.2d at 685. The type of information considered intimate and embarrassing by the Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. 540 S.W.2d at 683. After reviewing the remaining submitted documents, we conclude that it does not contain any information protected by common-law privacy. Accordingly, the district may not withhold any information under section 552.101 or section 552.102 in conjunction with common-law privacy. *See* Open Records Decision Nos. 470 (1987) (public employee's job performance does not generally constitute his private affairs), 455 (1987) (public employee's job performances or abilities generally not protected by privacy), 423 at 2 (1984) (explaining that because of the greater legitimate public interest in the disclosure of information regarding public employees, employee privacy is confined to information that reveals "intimate details of a highly personal nature").

We note, however, that Exhibit C contains information that may be excepted under section 552.117 of the Government Code. Section 552.117(a)(1) excepts from disclosure the home address and telephone number, social security number, and family member information of a current or former employee of a governmental body who timely requests that this information be kept confidential under section 552.024 of the Government Code. Whether a particular item of information is excepted from disclosure under section 552.117(a)(1) must be determined at the time the governmental body receives the request for information. *See* Open Records Decision No. 530 at 5 (1989). Thus, the district may only withhold information under section 552.117(a)(1) on behalf of a current or former employee who made a request for confidentiality under section 552.024 prior to the date of the district's receipt of this request for information. The district may not withhold information under section 552.117(a)(1) on behalf of a current or former employee who did not make a timely election under section 552.024 to keep the information confidential. We have marked the information that the district must withhold under section 552.117(a)(1) if the person to whom the marked information pertains timely elected under section 552.024 to keep the information confidential.

Regardless of the applicability of section 552.117, a social security number contained within Exhibit C may be confidential under federal law. Section 552.101 also encompasses amendments to the Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), that make confidential social security numbers and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See* Open Records Decision No. 622 (1994). We have no basis for concluding that the social security number at issue is confidential under section 405(c)(2)(C)(viii)(I) and therefore excepted from public disclosure under section 552.101 on the basis of that federal provision. We caution, however, that

section 552.352 of the Government Code imposes criminal penalties for the release of confidential information. Prior to releasing any social security number information, you should ensure that such information is not obtained or maintained by the district pursuant to any provision of law enacted on or after October 1, 1990.

Lastly, some of the submitted information is protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are protected by copyright. Attorney General Opinion JM-672 (1987). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.* If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit. *See* Open Records Decision No. 550 (1990).

In summary, we conclude: (1) except for the teacher's name, degree obtained, and courses taken, the submitted college transcripts must be withheld under section 552.102(b) of the Government Code, (2) you must withhold the information we have marked under section 552.117 if the employee at issue timely elected to keep such information confidential under section 552.024, and (3) regardless of the applicability of section 552.117, the submitted social security number may be confidential under federal law. The remaining information must be released to the requestor in accordance with the applicable copyright law.

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,



Sarah I. Swanson  
Assistant Attorney General  
Open Records Division

SIS/lmt

Ref: ID# 192229

Enc. Submitted documents

c: Mr. Christopher J. Alonzo  
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Laredo, Texas 78045  
(w/o enclosures)