



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 6, 2004

Ms. Lydia L. Perry  
Law Offices of Robert E. Luna, P.C.  
4411 North Central Expressway  
Dallas, Texas 75205

OR2004-0084

Dear Ms. Perry:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 193783.

The Carrollton-Farmers Branch Independent School District (the "district"), which you represent, received a request for the personnel file of a named district employee. You claim that portions of the requested information are excepted from disclosure under sections 552.101, 552.102, 552.117, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

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 information made confidential by other statutes. You contend that the information in Exhibit D is confidential under section 21.355 of the Education Code. 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 determined 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 the 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 serving as an administrator at the time of the evaluation. *Id.* You indicate, and the documents reflect, that Exhibit D consists of evaluations of a district teacher and administrator. Thus, provided the

employee was required to hold and did hold the appropriate certificate and was teaching at the time of the submitted teaching evaluations, and provided the employee was required to hold and did hold the appropriate certificate and was serving as an administrator at the time of the submitted administrator evaluations, we find the district must withhold the information in Exhibit D under section 552.101 in conjunction with section 21.355 of the Education Code.

Next, you seek to withhold portions of the transcripts submitted as Exhibit C pursuant to section 552.102 of the Government Code. Section 552.102(b) excepts from disclosure most information on a transcript from an institution of higher education maintained in the personnel files of professional public school employees. Gov't Code §552.102(b). Section 552.102(b) excepts from disclosure all information from transcripts other than the employee's name, the courses taken, and the degree obtained. Open Records Decision No. 526 (1989). Thus, with the exception of the employee's name, the courses taken, and the degree obtained, the district must withhold the information in the submitted transcripts pursuant to section 552.102(b) of the Government Code.

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 timely elect to keep this information confidential pursuant to 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). Therefore, the district may only withhold information under section 552.117 on behalf of current or former officials or employees who elected to keep information confidential pursuant to section 552.024 prior to the date on which the request for this information was made. You represent that the district employee at issue timely elected to keep this information confidential prior to the date the district received the present request. We therefore determine that the district must withhold the information we have marked in the submitted documents pursuant to section 552.117(a)(1) of the Government Code.

Finally, the submitted documents contain information that is excepted from disclosure under section 552.130 of the Government Code. Section 552.130 provides in pertinent 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; [or]
- (2) a motor vehicle title or registration issued by an agency of this state[.]

The district must withhold the information we have marked pursuant to section 552.130 of the Government Code.

In summary, provided the district employee at issue held the required certificates and was teaching or serving as an administrator during the time periods at issue, the district must withhold the submitted evaluations in Exhibit D under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code. Except for the employee's name, courses taken, and degree obtained, the district must withhold the information in the transcripts submitted as Exhibit C pursuant to section 552.102(b) of the Government Code. We have marked information that the district must withhold pursuant to sections 552.117 and 552.130 of the Government Code. The remainder of the information at issue 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,



David R. Saldivar  
Assistant Attorney General  
Open Records Division

DRS/seg

Ref: ID# 193783

Enc: Submitted documents

c: Mr. Glenn Larson  
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Carrollton, Texas 75006  
(w/o enclosures)