



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 12, 2004

Mr. Stephen E. Dubner  
Walsh, Anderson, Brown, Schulze & Aldridge, P.C.  
P.O. Box 168046  
Irving, Texas 75016-8046

OR2004-3888

Dear Mr. Dubner:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 201352.

The Venus Independent School District (the "district"), which you represent, received a request for personnel information of a named former district employee, "including employment application, performance reviews, disciplinary actions, investigations, or any other information contained in the employee personnel file[.]" You indicate that some responsive information will be provided to the requestor, with personally identifiable student information redacted pursuant to the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code.<sup>1</sup> See Open Records Decision No. 634 (1995) (governmental body may withhold student identifying information from "education records" protected by FERPA without necessity of requesting an attorney general decision). You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.135 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

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<sup>1</sup> 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); see also 34 C.F.R. § 99.3 (defining personally identifiable information).

Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” This section encompasses information made confidential by other statutes. You contend that the information submitted as Exhibit C is confidential under section 21.355 of the Education Code. Section 21.355 provides, “A document evaluating the performance of a teacher or administrator is confidential.” This office has 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 state that the information in Exhibit C consists of evaluations of a person who was required to hold and did hold a certificate, and who was teaching at the time of the evaluations. Based on your representations and the reasoning set out in Open Records Decision No. 643, we agree that the information in Exhibit C is confidential under section 21.355 of the Education Code. Accordingly, the district must withhold Exhibit C pursuant to section 552.101 of the Government Code.

Next, you contend that information identifying district employees in Exhibit D is excepted under section 552.135 of the Government Code. Section 552.135 provides in pertinent part:

(a) “Informer” means a student or former student or an employee or former employee of a school district who has furnished a report of another person’s or persons’ possible violation of criminal, civil, or regulatory law to the school district or the proper regulatory enforcement authority.

(b) An informer’s name or information that would substantially reveal the identity of an informer is excepted from [required public disclosure.]

Gov’t Code § 552.135. Because the legislature limited the protection of section 552.135 to the identity of a person who reports a possible violation of “law,” a school district that seeks to withhold information under section 552.135 must clearly identify to this office the specific civil, criminal, or regulatory law that is alleged to have been violated. *See* Gov’t Code § 552.301(e)(1)(A).

You state that “a [district] employee and student came forward to report behavior that could possibly constitute an assault in violation of Chapter 22 of the Texas Penal Code and sexual harassment in violation of Title IX [of the General Education Amendments of 1972].” *See* 20 U.S.C. § 1681 *et seq.* The documents in Exhibit D reflect that parents of a district student made a complaint concerning the former employee at issue to a district administrator; however, you have redacted the parents’ identities from the submitted documents pursuant to FERPA. Thus, we need not reach your claim under section 552.135 with respect to these

parents. Furthermore, to the extent you contend that a district employee's identity is excepted from disclosure under section 552.135, you have not identified which employee you seek to protect under the exception, nor have you explained why section 552.135 should apply to any such individual in this instance. We therefore determine that the district has failed to establish that section 552.135 of the Government Code is applicable to any of the information in Exhibit D. Accordingly, the district may not withhold any of the information in Exhibit D pursuant to section 552.135 of the Government Code.

In summary, the district must withhold Exhibit C pursuant to section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code. The remainder of the 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,



David R. Saldivar  
Assistant Attorney General  
Open Records Division

DRS/seg

Ref: ID# 201352

Enc: Submitted documents

c: Mr. Art Oldner  
640 West Kilpatrick Street  
Cleburne, Texas 76033  
(w/o enclosures)