



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 27, 2004

Ms. Mia M. Martin  
General Counsel  
Richardson Independent School District  
400 South Greenville Avenue  
Richardson, Texas 75081-4198

OR2004-6285

Dear Ms. Martin:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 205895.

The Richardson Independent School District (the "district") received a request for the complete personnel file of a named district employee, including all internal affairs and public integrity records; evaluations; documentation about any commendations; disciplinary actions; grievances or complaints; and any other information concerning the named employee's job performance or work history. The requestor indicates that she does not seek the employee's social security number, health information, family information and home address. You state that the district will make some of the requested information available to the requestor. Further, you state that the district will redact or withhold any student identifying information protected under the Family Educational Rights and Privacy Act ("FERPA").<sup>1</sup> You claim that the remaining requested information is excepted from disclosure under sections 552.101, 552.102, 552.117, 552.130, 552.135, and 552.137 of the Government Code. We have

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<sup>1</sup>In Open Records Decision No. 634 (1995), this office concluded that 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.

considered the exceptions you claim and reviewed the submitted representative sample of the information.<sup>2</sup>

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 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 state that the named district employee in question is a certified educator and administrator. You also state that portions of the submitted information consist of documents evaluating the performance of this named district employee. We have reviewed the submitted information and find that some of it evaluates the "performance of a teacher or administrator." Therefore, we conclude that the information we have marked is confidential under section 21.355 of the Education Code, and must be withheld under section 552.101 of the Government Code. The remaining submitted documents are not evaluations for purposes of section 21.355 and they may not be withheld under section 552.101 on that basis.

Section 552.102(a) of the Government Code protects "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." The test for determining whether information is excepted under section 552.102 is the same as the one used to decide whether it is protected by the common-law right to privacy under section 552.101.<sup>3</sup> *Hubert v. Harte-Hanks Tex. Newspapers*, 652 S.W.2d 546 (Tex. App.--Austin 1983, writ ref'd n.r.e.).

For information to be protected from public disclosure under common-law privacy, the information must meet the criteria set out in *Indus. Foundation v. Tex. Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976). Information must be withheld from the public when (1) it is highly intimate and embarrassing such that its release would be highly objectionable

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<sup>2</sup>We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

<sup>3</sup>Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy.

to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. *Id.* at 685; Open Records Decision No. 611 at 1 (1992). The type of information considered intimate and embarrassing by the Texas Supreme 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. *Id.* at 683. Upon review of the remaining submitted information, we conclude that these documents consist of information regarding the employment of the individual in question and, thus, are of legitimate concern to the public. *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), 444 (1986) (public has legitimate interest in knowing reasons for dismissal, demotion, promotion, or resignation of public employees). The remaining submitted information is not confidential under common-law privacy and may not be withheld under section 552.102(a) of the Government Code.

You also claim portions of the remaining submitted information may be excepted from disclosure under section 552.101 in conjunction with the informer's privilege. The informer's privilege has long been recognized by Texas courts. *See Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969). It protects the identities of persons who report activities over which the governmental body has criminal or quasi-criminal law-enforcement authority, provided that the subject of the information does not already know the informer's identity. *See* Open Records Decision Nos. 515 at 3 (1988), 208 at 1-2 (1978). The informer's privilege protects the identities of individuals who report violations of statutes to the police or similar law-enforcement agencies. It also protects the identities of individuals who report violations of statutes with civil or criminal penalties to "administrative officials having a duty of inspection or of law enforcement within their particular spheres." Open Records Decision No. 279 at 2 (1981), citing Wigmore, *Evidence*, § 2374, at 767 (McNaughton rev. ed. 1961). The report must be of a violation of a criminal or civil statute. *See* Open Records Decision Nos. 582 at 2 (1990), 515 at 4-5 (1988). Furthermore, as its purpose is to protect the flow of information to the governmental body, rather than to protect the interests of the person who furnishes the information, the informer's privilege, unlike other claims under section 552.101 of the Government Code, can be waived. *See* Open Records Decision Nos. 630 at 4 (1994), 549 at 6 (1990).

You state that "the complainants and other persons whom [the district] interviewed in its investigations provided information about [the named district employee's] alleged conduct." Further, you state that "[t]o the extent any of that information received from students or employees (current or former) may be characterized as reports of a possible violation of criminal, civil, or regulatory law, information that would reveal the informer's identity is excepted from disclosure." However, you do not specify what law or laws were reported to be allegedly violated. We therefore conclude that the district may not withhold any information pursuant to section 552.101 in conjunction with the common-law informer's privilege.

Next, you contend that portions of the named district employee's college transcripts are excepted from disclosure under section 552.102(b). 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.

Gov't Code § 552.102(b). Accordingly, we conclude that the district must release those portions of the transcripts that reveal the named district employee's name, degree obtained, and courses taken. The remaining information contained in the transcripts must be withheld pursuant to section 552.102(b).

Next, we address the applicability of section 552.117 to portions of the information at issue. Section 552.117(a)(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 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 made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. You state that, in this case, prior to the district's receipt of the request, the named district employee made a request for confidentiality under section 552.117. Therefore, the district must withhold the information that you have highlighted, as well as a small amount of information that we have marked, pursuant to section 552.117(a)(1). Additionally, we note that the submitted information includes a letter from a district administrator to an individual you have identified as another district employee. If this district employee made a timely request to withhold her personal information from disclosure, the district must withhold the information you have highlighted under section 552.117(a)(1). If the employee did not make such a timely election, the district may not withhold this highlighted information.

Next, we address the applicability of section 552.130 to portions of the information at issue. Section 552.130 excepts from public disclosure information relating to a driver's license or motor vehicle title or registration issued by an agency of this state. Thus, we have marked the information in the submitted documents that the district must withhold pursuant to section 552.130.

We next address your claim under section 552.135 of the Government Code for portions of the submitted information. Section 552.135 provides:

(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].

(c) Subsection (b) does not apply:

(1) if the informer is a student or former student, and the student or former student, or the legal guardian, or spouse of the student or former student consents to disclosure of the student's or former student's name; or

(2) if the informer is an employee or former employee who consents to disclosure of the employee's or former employee's name; or

(3) if the informer planned, initiated, or participated in the possible violation.

(d) Information excepted under Subsection (b) may be made available to a law enforcement agency or prosecutor for official purposes of the agency or prosecutor upon proper request made in compliance with applicable law and procedure.

(e) This section does not infringe on or impair the confidentiality of information considered to be confidential by law, whether it be constitutional, statutory, or by judicial decision, including information excepted from the requirements of Section 552.021.

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 number of parents and employees have filed formal grievances against the named district employee and that the district investigated these grievances. You state that "the complainants and other persons whom [sic] [the district] interviewed in its investigations provided information about [the named district employee's] alleged conduct." Further, you state that "[t]o the extent any of that information received from students or employees (current or former) may be characterized as reports of a possible violation of criminal, civil, or regulatory law, information that would reveal the informer's identity is excepted from disclosure." However, you do not specify what civil, criminal, or regulatory

law or laws were reported to be allegedly violated. Therefore, we find that the district may not withhold any portion of the submitted information under section 552.135 of the Government Code.

Finally, we address the applicability of section 552.137 to portions of the submitted information. Section 552.137 makes certain e-mail addresses confidential. Section 552.137 provides:

(a) Except as otherwise provided by this section, an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under this chapter.

(b) Confidential information described by this section that relates to a member of the public may be disclosed if the member of the public affirmatively consents to its release.

(c) Subsection (a) does not apply to an e-mail address:

(1) provided to a governmental body by a person who has a contractual relationship with the governmental body or by the contractor's agent;

(2) provided to a governmental body by a vendor who seeks to contract with the governmental body or by the vendor's agent;

(3) contained in a response to a request for bids or proposals, contained in a response to similar invitations soliciting offers or information relating to a potential contract, or provided to a governmental body in the course of negotiating the terms of a contract or potential contract; or

(4) provided to a governmental body on a letterhead, coversheet, printed document, or other document made available to the public.

(d) Subsection (a) does not prevent a governmental body from disclosing an e-mail address for any reason to another governmental body or to a federal agency.

Gov't Code § 552.137. Under section 552.137, a governmental body must withhold the e-mail address of a member of the general public, unless the individual to whom the e-mail address belongs has affirmatively consented to its public disclosure. *See id.* § 552.137(b). You do not inform us that a member of the public has affirmatively consented to the release

of any e-mail address contained in the submitted materials. The district must, therefore, withhold e-mail addresses of members of the public under section 552.137.

In summary, the information we have marked must be withheld under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code. With the exception of those portions that reveal the named district employee's name, degree obtained, and courses taken, the district must withhold the transcripts under section 552.102(b). The district must withhold the information that you have highlighted, as well as a small amount of information that we have marked, pursuant to section 552.117(a)(1). The district must withhold e-mail addresses of members of the public under section 552.137. 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).

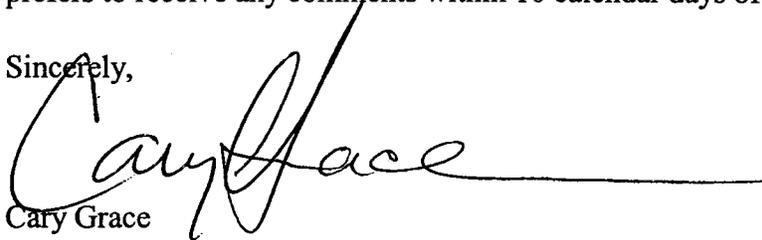
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following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

A handwritten signature in cursive script that reads "Cary Grace". The signature is written in black ink and is positioned above the typed name and title.

Cary Grace  
Assistant Attorney General  
Open Records Division

ECG/seg

Ref: ID# 205895

Enc. Submitted documents

c: Ms. Kristine Hughes  
Richardson Morning News  
1202 Richardson Drive, Suite 210  
Richardson, Texas 75080  
(w/o enclosures)