



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 1, 2004

Mr. Mario L. Vasquez
Assistant General Counsel
Houston I.S.D.
3830 Richmond Avenue
Houston, Texas 77027-5838

OR2004-7459

Dear Mr. Vasquez:

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# 208331.

The Houston Independent School District (the "district") received a request for the personnel files of three named employees. You indicate that the majority of the requested information will be made available to the requestor. You claim that submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.¹

Initially, you state that you have withheld each of the employees' "teaching evaluations" under section 552.101 of the Government Code and that you have redacted certain information from the employees' college transcripts pursuant to section 552.102(b) of the Government Code. However, you did not submit the "teaching evaluations" or transcripts, or a representative sample of these documents to our office for review. See Gov't Code § 552.301(e) (within fifteen business days of receiving written request for information, governmental body must submit to this office copies of specific information at issue, or

¹You inform us that the district has redacted student identifying information from the requested information. This office has determined that a governmental body may withhold student identifying information that is protected by the Family Education Rights and Privacy Act of 1974, 20 U.S.C. § 1232g, without the necessity of requesting an attorney general decision. Open Records Decision No. 634 (1995).

representative samples). Furthermore, this office has not granted the district a previous determination to withhold "teaching evaluations" or transcripts from disclosure. Therefore, this information is presumed to be public and must be released unless a compelling reason exists to withhold it. *See* Gov't Code §§ 552.301(e), .302. A compelling reason exists to withhold information when the information is confidential by law or where third party interests are at stake. Open Records Decision No. 150 (1977). The applicability of sections 552.101 and 552.102(b) can provide compelling reasons to withhold information. However, as you have not submitted the "teaching evaluations" or transcripts to this office for review, we have no basis for finding this information confidential. Thus, we have no choice but to conclude that this information must be released to the requestor pursuant to section 552.302. If you believe that this information is confidential and may not lawfully be released, you must challenge this ruling in court as outlined below.

You claim that the submitted information, which consists of letters, memoranda, and an investigation report, is excepted from disclosure under section 552.101 in conjunction with section 21.355 of the Education 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 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 this instance, the submitted information does not evaluate the performance of a teacher for purposes of section 21.355. Therefore, we conclude that the submitted information is not confidential under section 21.355 of the Education Code and thus may not be withheld under section 552.101 of the Government Code.

Finally, we note that the submitted information includes a teacher's home address and telephone number. 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 552.024.² 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 the teacher's home address and telephone number under section 552.117(a)(1) if she made a request for confidentiality under section 552.024 prior to the date on which the request for this information was received. The district may not withhold the teacher's home address or telephone number under section 552.117(a)(1) if she did not timely elect to keep this information confidential. The remaining information must be released to the requestor.

²The Office of the Attorney General will raise a mandatory exception like section 552.117 on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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 "Karen Hattaway".

Karen Hattaway
Assistant Attorney General
Open Records Division

KEH/sdk

Ref: ID# 208331

Enc. Submitted documents

c: Ms. Marsha Miller
15750 Boulder Oaks
Houston, Texas 77084
(w/o enclosures)