



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

March 30, 2005

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

OR2005-02676

Dear Ms. Perry:

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# 221059.

The Lewisville Independent School District (the "district"), which you represent, received a request for the personnel files of five assistant coaches from Colony High School who were recently reassigned by the district and the related investigation report. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.117, and 552.130 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>2</sup>

As a preliminary matter, you state that most of the information at issue in the present request was the subject of a prior ruling of this office, issued as Open Records Letter No. 2005-02010 (2005). *See* Open Records Decision No. 673 (2001) (governmental body may rely on prior ruling as previous determination when 1) the records or information at issue are precisely the same records or information that were previously submitted to this office pursuant to section 552.301(e)(1)(D); 2) the governmental body which received the request for the records or information is the same governmental body that previously requested and received a ruling from the attorney general; 3) the prior ruling concluded that the precise records or information are or are not excepted from disclosure under the Act; and 4) the law,

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<sup>1</sup>We note that you also raise section 552.114 of the Government Code. However, you have not provided any arguments explaining how this exception is applicable to the submitted information. Therefore, we presume you no longer assert this exception to disclosure. *See* Gov't Code §§ 552.301, .302.

<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.

facts, and circumstances on which the prior ruling was based have not changed since the issuance of the ruling). We understand that the facts and circumstances have not changed since the issuance of Open Records Letter No. 2005-02010. Thus, to the extent the records at issue in the present request are identical to the records that were the subject of Open Records Letter No. 2005-02010, we determine the district may rely on that ruling as a previous determination for such records. To the extent the submitted records are not identical to the records at issue in Open Records Letter No. 2005-02010, we address your claimed exceptions to disclosure.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code §552.101. This section encompasses information protected by other statutes. Section 1703.306 of the Occupations Code provides that "a person for whom a polygraph examination is conducted . . . may not disclose information acquired from a polygraph examination" except to certain categories of people. It does not appear that any of the exceptions in section 1703.306 apply in this instance. *See* Open Records Decision 565 (1990) (construing predecessor statute). Accordingly, we conclude that the district must withhold the information we have marked pursuant to section 552.101 of the Government Code in conjunction with section 1703.306 of the Occupations Code.

Section 552.101 of the Government Code also encompasses section 1324a of title 8 of the United States Code, which provides that an I-9 form "may not be used for purposes other than for enforcement of this chapter" and for enforcement of other federal statutes governing crime and criminal investigations. *See* 8 U.S.C. § 1324a(b)(5); *see also* 8 C.F.R. § 274a.2(b)(4). The release of the submitted I-9 form in response to this request for information would be "for purposes other than for enforcement" of the referenced federal statutes. Accordingly, we conclude that the district may only release the submitted I-9 form in compliance with the federal laws and regulations governing the employment verification system.

The district also contends that a portion of the submitted information is excepted under section 552.101 of the Government Code in conjunction with 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 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.* Based on your representations and the reasoning set out in Open Records Decision No. 643, we find that the submitted professional development and appraisal documents, which we have marked, are confidential under section 21.355 of the Education Code.

You claim that portions of the submitted transcripts are excepted under section 552.102(b). Section 552.102(b) excepts from disclosure all information from transcripts of professional

public school employees other than the employee's name, the courses taken, and the degree obtained. Gov't Code § 552.102; 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 remaining information in the submitted transcript pursuant to section 552.102(b) of the Government Code.

You also claim that portions of the submitted information are excepted under section 552.117(a)(1) of the Government Code, which 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 of the Government Code. *See* Gov't Code § 552.117(a)(1). However, information subject to section 552.117(a)(1) may not be withheld from disclosure if the current or former employee made the request for confidentiality under section 552.024 after the request for information at issue was received by the governmental body. Whether a particular piece of information is public must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). You provide documentation showing that one of the employees at issue timely elected to keep his home address and telephone number, social security number, and family member information confidential. Thus, the district must withhold the employee's personal information, which we have marked, under section 552.117(a)(1) of the Government Code.

The submitted information includes Texas-issued driver's license information. Section 552.130 of the Government Code prohibits the release of information that relates to a motor vehicle operator's or driver's license or permit issued by an agency of this state or a motor vehicle title or registration issued by an agency of this state. *See* Gov't Code § 552.130. Accordingly, the district must withhold the Texas driver's license information it has marked pursuant to section 552.130 of the Government Code.

We note that the submitted information also includes an e-mail address subject to section 552.137 of the Government Code. Section 552.137 excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body," unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c).<sup>3</sup> *See* Gov't Code § 552.137(a)-(c). Section 552.137 does not apply to a government employee's work e-mail address because such an address is not that of the employee as a "member of the public" but is instead the address of the individual as a government employee. The e-mail address at issue does not appear to be of a type specifically excluded by section 552.137(c). You do not inform us that the employee to whom the e-mail address at issue pertains has affirmatively consented to the release of his e-mail address. The district must, therefore, withhold the e-mail address we have marked under section 552.137 of the Government Code.

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<sup>3</sup>This office will raise a mandatory exception like section 552.137 on behalf of a governmental body but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

In summary, pursuant to section 552.101 of the Government Code, the district must withhold (1) the information we have marked in conjunction with section 1703.306 of the Occupations Code; (2) the submitted I-9 form in conjunction with federal law; and (3) the marked professional development and appraisal documents in conjunction with section 21.355 of the Education Code. With the exception of information concerning the employee's curricula and degree obtained, the district must withhold the submitted transcripts pursuant to section 552.102(b) of the Government Code. The district must also withhold the employee's marked home address and telephone number, social security number, and family member information under section 552.117(a)(1) of the Government Code. The marked Texas driver's license information must be withheld under 552.130 of the Government Code. The marked e-mail address must be withheld under section 552.137 of the Government Code. The remaining 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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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); *Tex. 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,



Caroline E. Cho  
Assistant Attorney General  
Open Records Division

CEC/krl

Ref: ID# 221059

Enc. Submitted documents

c: Mr. Chris Roark  
The Colony Courier Leader  
405-A State Highway 121 Bypass, Suite 110  
Lewisville, Texas 75067  
(w/o enclosures)