



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 3, 2005

Ms. Mari McGowan  
Abernathy, Roeder, Boyd, & Joplin, P.C.  
P.O. Box 1210  
McKinney, Texas 75070-1210

OR2005-03819

Dear Ms. McGowan:

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# 223213.

The McKinney Independent School District (the "district"), which you represent, received a request for information related to disciplinary actions taken against three specified district employees. You claim that the 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. We have also considered comments submitted by the requestor and on behalf of the district employees at issue. *See Gov't Code § 552.304* (providing that interested party may submit comments stating why information should or should not be released).

Initially, we address the requestor's contention that the department is in violation of the procedural requirements of the Act. Pursuant to section 552.301(b) of the Government Code, a governmental body must ask for the attorney general's decision and state the exceptions that apply within ten *business* days after receiving the request. *See Gov't Code § 552.301(a), (b)*. The submitted documentation indicates that requestor submitted a previous request to the district on February 7, 2005. The submitted documentation further indicates the district clarified this previous request with the requestor and provided a response. *See Gov't Code § 552.222* (stating that governmental body may ask requestor to clarify or narrow scope of request, if governmental body determines in good faith that it cannot identify the requested information, or that scope of the request encompasses large amount of information); *see also* Open Records Decision No. 663 at 5 (1999) (discussing requests for clarification). The submitted documentation shows the present request was made following the district's

response to the previous request. You state, and provide documentation showing, that the district received the present request on February 12, 2005. The district's request for a decision to this office bears a post office mark indicating it was mailed on February 23, 2005, within ten business days of receiving the present request. *See* Gov't Code § 552.308(a) (ten day deadline met if request bears post office mark indicating time within ten day period). We therefore find the district complied with the procedural requirements of section 552.301 in requesting this ruling.

Next, we note that the submitted documents contain information that must be withheld pursuant to the Family Education Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232g. *See* Gov't Code § 552.026 (incorporating provisions of FERPA into the Act). 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 552.114 of the Government Code without the necessity of requesting an attorney general decision as to those exceptions. Information must be withheld from required public disclosure under FERPA only to the extent "reasonable and necessary to avoid personally identifying a particular student" or "one or both parents of such a student." *See* Open Records Decision Nos. 332 (1982), 206 (1978). It appears that, pursuant to FERPA, the district has redacted student identifying information from the submitted records. We have marked additional information identifying parents of district student's that must be withheld under FERPA. We note that the requestor has access to any of her own identifying information in the submitted documents. *See* 20 U.S.C. § 1232g(a)(1)(A) (FERPA provision granting parents affirmative right of access to their child's identifying information). We now address the exception raised in the submitted arguments.

Both the district and the employees at issue contend the requested information is excepted from disclosure by section 552.101 of the Government Code. This provision excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision" and 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 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 district employees at issue held such certificates and permits at the time the submitted documents were created.

The documents you seek to withhold under this provision are e-mails regarding district employees. Upon review, we find that these documents are not the type of records made

confidential by section 21.355 of the Education Code. The district employees argue that these documents are confidential under section 21.355 because such records would be required to be included in the employees' performance appraisals. *See* 19 Tex. Admin. Code § 150.1003 (2005) (Tex. Educ. Agency, Appraisals, Data Sources, and Conferences). Although this information may ultimately be included in the employees' actual evaluations, the documents themselves are not evaluative. The district employees further argue that the Commissioner of Education has ruled that reprimands are evaluations for the purposes of section 21.355. *Tave v. Dallas Indep. Sch. Dist.*, Dkt. No. 067-R2-501 (Comm's Educ. 2001). However, we disagree with the Commissioner's ruling in *Tave*. Thus, we find that the submitted documents are not confidential under section 21.355 and are not excepted from disclosure under section 552.101.

We note the submitted documents include the e-mail address of a private citizen. Section 552.137 of the Government Code 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). *See* Gov't Code § 552.137(a)-(c). We note that section 552.137 does not apply to a government employee's work e-mail address. The e-mail address we have marked is not of a type specifically excluded by section 552.137(c). Therefore, the district must withhold the e-mail address in accordance with section 552.137 unless the district receives consent for its release.

In summary, the district must withhold the marked identifying information under FERPA. The district must withhold the marked e-mail address under section 552.137 of the Government Code. The remaining submitted information must be released.

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,



Ramsey A. Abarca  
Assistant Attorney General  
Open Records Division

RAA/jev

Ref: ID# 223213

Enc. Submitted documents

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