



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 1, 2005

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

OR2005-05836

Dear Mr. Dubner:

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# 227241.

The Terrell Independent School District (the "district"), which you represent, received a request for the personnel records of a named district employee. You state that the district has released some information but you claim that the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.117, 552.130, and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 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 21.355 of the Education Code provides, "A document evaluating the performance of a teacher or administrator is confidential." Educ. Code § 21.355. 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.* Exhibit B consists of performance evaluation of the employee at issue. You state that at the time of the evaluations the employee was a teacher

or administrator performing in that capacity. Based on the reasoning set out in Open Records Decision No. 643, we conclude that the documents submitted as Exhibit B are confidential evaluations under section 21.355 of the Education Code. Therefore, pursuant to section 552.101 of the Government Code, the district must withhold Exhibit B.

You claim that portions of the transcripts submitted as Exhibit C are excepted from disclosure under section 552.102(b) of the Government Code. 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(b); 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 submitted transcripts in Exhibit C pursuant to section 552.102(b) of the Government Code.

You argue that the employee's grade point averages contained in documents in Exhibit E are also excepted under section 552.102(b) because it is the same information that is confidential on the submitted transcripts. However, section 552.102(b) applies only to transcripts and the relevant documents in Exhibit E are not transcripts. Accordingly, this exception does not apply to the employee's grade point averages contained in Exhibit E. *See also* Open Records Decision Nos. 649 at 3 (1996) (language of a confidentiality provision controls the scope of its protection), 478 at 2 (1987) (statutory confidentiality requires express language making certain information confidential or stating that information shall not be released to the public).

You further claim certain personal information of the employee at issue is excepted from disclosure under section 552.117(a) of the Government Code. This provision 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). Section 552.117 also encompasses a personal cell telephone number, provided that the cell phone service is not paid for by a governmental body. *See* Open Records Decision No. 506 at 5-6 (1988) (Gov't Code § 552.117 not applicable to cellular mobile phone numbers paid for by governmental body and intended for official use). However, date of birth information is not excepted from disclosure under this provision. Gov't Code § 552.117(a). Information that is 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 state the employee at issue has made a timely election to keep her personal information confidential pursuant to section 552.024. Therefore, unless otherwise indicated, the district must withhold the personal information you have marked in Exhibits D and E under section 552.117(a)(1). We have marked additional information in these exhibits that must be withheld under section 552.117.

You also claim the marked Texas driver's license number of the employee is excepted from disclosure by section 552.130 of the Government Code. This section excepts from disclosure information that "relates to . . . a motor vehicle operator's or driver's license or permit issued by an agency of this state[.]" Gov't Code § 552.130. In accordance with section 552.130 of the Government Code, the district must withhold the marked driver's license number. *See* Gov't Code § 552.130.

You have marked a private e-mail address of the employee that you seek to withhold under 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). *See* Gov't Code § 552.137(a)-(c). You indicate the employee has not consented to release of the private e-mail address. Further, the marked e-mail address is not of a type specifically excluded by section 552.137(c). Therefore, the district must withhold this private e-mail address in accordance with section 552.137.

In summary, the district must withhold the submitted evaluations in Exhibit B under section 21.355 of the Education Code in conjunction with section 552.101 of the Government Code. With the exception of the employee's name, the courses taken, and the degree obtained, the district must withhold the submitted transcripts in Exhibit C pursuant to section 552.102(b) of the Government Code. The district must withhold the employee's personal information under section 552.117(a)(1) of the Government Code as marked. The district must withhold the marked Texas driver's license number under section 552.130 of the Government Code. The district must withhold the marked e-mail address under section 552.137. 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/sdk

Ref: ID# 227241

Enc. Submitted documents

c: Ms. Carolyn Middleton  
15555 SH 205  
Terrell, Texas 75160  
(w/o enclosures)