



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 4, 2005

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

OR2005-08993

Dear Ms. Marin:

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# 233482.

The Richardson Independent School District (the "district") received a request for several categories of information regarding a named principal and information regarding a lawsuit initiated by a named person. You state that the district has withheld the student-identifying information in the submitted documents under the Family Educational Rights and Privacy Act ("FERPA") in accordance with Open Records Decision No. 634 (1995).<sup>1</sup> You claim that the remaining submitted information is excepted from disclosure under sections 552.101, 552.102, 552.117, 552.135, and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.<sup>2</sup>

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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.

<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.

Initially, we note that while you raise sections 552.102 and 552.135 of the Government Code, you have provided no comments explaining why these exceptions are applicable. Further, you have not marked any portion of the submitted documents to indicate information that you claim is so excepted. We therefore presume the district no longer intends to claim sections 552.102 and 552.135 as exceptions to disclosure. *See* Gov't Code § 552.301(e)(1)(A).

Section 552.101 of the Government Code excepts from public 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 section 21.355 of the Education Code, which provides, "A document evaluating the performance of a teacher or administrator is confidential." This office has 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, we 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, we concluded that 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 seek to withhold documents you have marked, as well as the highlighted portion of a written reprimand under section 552.101 in conjunction with section 21.355. After reviewing the information at issue, we agree that most of the records you have marked are evaluations of the individual's performance as a teacher. Accordingly, we conclude that this information, which we have marked, is confidential under section 21.355 and must be withheld under section 552.101 of the Government Code.<sup>3</sup> However, the highlighted portion of the written reprimand is not an evaluation of the individual's performance as a teacher, and thus, it may not be withheld under section 552.101 in conjunction with section 21.355. As you do not claim any other exceptions against the disclosure of this highlighted portion, it must be released.

You claim that the highlighted e-mail addresses are excepted 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). The e-mail addresses contained in the submitted information are not the type specifically excluded by section 552.137(c). Therefore, unless the individuals whose e-mail addresses are at issue consented to release of their e-mail address, the district must withhold the highlighted e-mail addresses in accordance with section 552.137 of the Government Code.

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<sup>3</sup>As the ruling on this information is dispositive, we need not address your section 552.117 argument for the information you have highlighted in these documents.

In summary, the district must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code. The district must withhold the highlighted e-mail addresses under section 552.137 of the Government Code. The remaining 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).

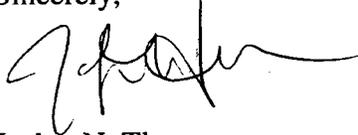
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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 Office of the Attorney General 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. 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 black ink, appearing to read 'Jaclyn N. Thompson', written in a cursive style.

Jaclyn N. Thompson  
Assistant Attorney General  
Open Records Division

JNT/krl

Ref: ID# 233482

Enc. Submitted documents

c: Eric D. Fein  
3500 Oak Lawn Ave, Suite 510  
Dallas, TX 75219  
(w/o enclosures)