



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 17, 2006

Ms. Emily D. Newhouse
Schwartz & Eichelbaum, P.C.
4201 W. Parmer Lane, Suite A-100
Austin, Texas 78727

OR2006-00491

Dear Ms. Newhouse:

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# 240307.

The Medina Independent School District (the "district"), which you represent, received a request for information pertaining to a named district coach. You state that some of the requested information has been provided to the requestor, but claim that the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.115, and 552.130 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." This section encompasses information protected by other statutes, including the Medical Practice Act (the "MPA"), subtitle B of title 3 of the Occupations Code. Section 159.002 of the MPA provides the following:

(b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.

(c) A person who receives information from a confidential communication or record as described by this chapter, other than a person listed in Section 159.004 who is acting on the patient's behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

Occ. Code § 159.002(b), (c). Medical records must be released upon the patient's signed, written consent, provided that the consent specifies (1) the information to be covered by the release, (2) reasons or purposes for the release, and (3) the person to whom the information is to be released. *Id.* §§ 159.004, 159.005. Section 159.002(c) also requires that any subsequent release of medical records be consistent with the purposes for which the governmental body obtained the records. Open Records Decision No. 565 at 7 (1990). Medical records may be released only as provided under the MPA. Open Records Decision No. 598 (1991). Exhibit D consists of medical records that may only be released in accordance with the MPA.¹ Open Records Decision No. 598 (1991).

Section 552.101 also encompasses section 21.355 of the Education Code, which provides that "[a] document evaluating the performance of a teacher or administrator is confidential." This office has interpreted section 21.355 to apply to any document that evaluates, as that term is commonly understood, the performance of a teacher. *See* Open Records Decision No. 643 (1996). In Open Records Decision No. 643, we determined that a "teacher" for purposes of section 21.355 means a person who (1) is required to and does in fact hold a teaching certificate under subchapter B of chapter 21 of the Education Code or a school district teaching permit under section 21.055 and (2) is engaged in the process of teaching, as that term is commonly defined, at the time of the evaluation. *See id.* at 4. On review of the information, we agree that a portion of the submitted information consists of evaluations. Thus, provided the employee at issue was required to hold and did hold the appropriate certificate and was teaching at the time of the submitted teaching evaluations, the information we have marked in Exhibit C under section 21.355 is confidential, and the district must withhold it under section 552.101 of the Government Code. However, we find that the remaining documents do not consist of evaluations of the performance of the teacher at issue for purposes of section 21.355, and the district may not withhold this information under section 552.101 on that ground.

You claim that portions of the employee's transcripts in Exhibit B are excepted 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, courses taken, and degree obtained, the district must withhold the information in the submitted transcripts in Exhibit B pursuant to section 552.102(b) of the Government Code.

You assert that the birth certificate in Exhibit E is excepted under section 552.115 of the Government Code. Section 552.115(a) provides that "[a] birth or death record maintained by the bureau of vital statistics of the Texas Department of Health or a local registration official is excepted from the requirements of Section 552.021[.]" Because section 552.115

¹As we are able to resolve this under the MPA, we do not address your other arguments for exception of Exhibit D.

only applies to information maintained by the bureau of vital statistics or local registration official, the district may not withhold the birth certificate pursuant to that provision. *See* Open Records Decision No. 338 (1982). We note, however, that the certificate contains information subject to section 552.117 of the Government Code.

Section 552.117(a)(1) excepts from disclosure the current and former home addresses and telephone 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. Whether information is protected by section 552.117(a)(1) must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Pursuant to section 552.117(a)(1), the district must withhold this personal information that pertains to a current or former employee of the district who elected, prior to the district's receipt of the request for information, to keep such information confidential. Such information may not be withheld for individuals who did not make a timely election. We have marked information that must be withheld if section 552.117 applies.

You assert that some of the remaining information is excepted under section 552.130 of the Government Code, which provides that a motor vehicle operator's, driver's license, motor vehicle title, or registration issued by a Texas agency is excepted from public release. Gov't Code § 552.130(a)(1), (2). We agree that the district must withhold Exhibit F, which consists of Texas motor vehicle record information, under section 552.130.

To conclude, Exhibit D may only be released in accordance with the MPA. The district must withhold the following: (1) the evaluations marked in Exhibit C under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code; (2) with the exception of the employee's name, courses taken, and degree obtained, the transcripts in Exhibit B pursuant to section 552.102(b) of the Government Code; (3) the information in Exhibit E marked under section 552.117 of the Government Code if the employee timely elected to keep that information confidential; and (4) Exhibit F under section 552.130 of the Government Code. The district must release the remaining information.

Although you also request a previous determination regarding teacher evaluations and transcripts, we decline to issue one at this time. Accordingly, 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).

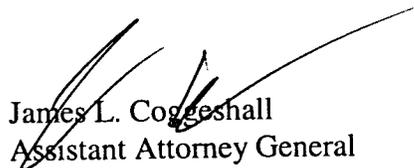
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/er

Ref: ID# 240307

Enc. Submitted documents

c: Mr. & Mrs. Thurman Mullins
2484 FM 337E
Medina, Texas 78055
(w/o enclosures)