

The ruling you have requested has been amended as a result of litigation and has been attached to this document.



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 5, 2006

Mr. William M. Buechler  
Buechler & Associates  
3660 Stoneridge Road, Suite D-101  
Austin, Texas 78746

OR2006-04648

Dear Mr. Buechler:

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# 250447.

The Crowley Independent School District (the "distirct"), which you represent, received a request for several categories of information regarding specific district personnel. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.102, and 552.114 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also considered comments submitted by the requestor. See Gov't Code § 552.304 (providing that any person may submit comments stating why information should or should not be released).

Section 552.102 of the Government Code excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Gov't Code § 552.102(a). In *Hubert v. Harte-Hanks Texas Newspapers*, 652 S.W.2d 546 (Tex. App.—Austin 1983, writ ref'd n.r.e.), the court ruled that the test to be applied to information claimed to be protected under section 552.102 is the same as the test formulated by the Texas Supreme Court in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668, 683-85 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977), for information claimed to be protected under the doctrine of common-law privacy as incorporated by section 552.101 of the Act.

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. In order for information to be protected from public disclosure by the doctrine of common-law privacy under section 552.101, the information must meet the criteria set out in *Industrial Foundation*. In *Industrial Foundation*, the Texas Supreme Court stated that information is excepted from disclosure under common-law privacy if it (1) contains highly intimate or embarrassing facts the release of which would be highly objectionable to a reasonable person and (2) is not of legitimate concern to the public. 540 S.W.2d at 685. You assert that release of the submitted employees' disciplinary information would violate the named employees' expectation of privacy. However, this information relates solely to the employees' performance on the job, as well as their resignations and terminations, which is of legitimate public interest. See Open Records Decision Nos. 444 at 5-6 (1986) (public has interest in public employee's qualifications and performance and circumstances of his resignation or termination), 405 at 2-3 (1983) (public has interest in manner in which public employee performs his job); see also Open Records Decision No. 423 at 2 (1984) (scope of public employee privacy is narrow). Accordingly, none of the submitted information may be withheld under section 552.101 of the Government Code in conjunction with common-law privacy.

You claim that some of the submitted documents are confidential under section 21.355 of the Education Code, which is also encompassed by section 552.101 of the Government Code. 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.* We understand you to indicate the named former employees were teachers for purposes of section 21.355 at the time the submitted documents were created. See *id.*

You claim that the submitted disciplinary documents are evaluative documents subject to section 21.355. Upon review, however, we find that these documents are letters to district personnel stating the final discipline and suspension of each person regarding specific incidents. Therefore, these documents are not evaluative, and thus, are not the type of records made confidential by section 21.355 of the Education Code. You further argue that the Commissioner of Education has ruled that written 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 none of the submitted documents are confidential under section 21.355 and are not excepted from disclosure under section 552.101 of the Government Code.

You claim that some of the information may be withheld under section 552.114 of the Government Code. Section 552.114 excepts from disclosure student records at an educational institution funded completely or in part by state revenue. This office generally applies the same analysis under section 552.114 and the Family Educational Rights and Privacy Act of 1974 ("FERPA"). See Open Records Decision No. 539 (1990). FERPA provides that no federal funds will be made available under any applicable program to an educational agency or institution that releases personally identifiable information (other than directory information) contained in a student's education records to anyone but certain enumerated federal, state, and local officials and institutions, unless otherwise authorized by the student's parent. See 20 U.S.C. § 1232g(b)(1). "Education records" means those records that contain information directly related to a student and are maintained by an educational agency or institution or by a person acting for such agency or institution. *Id.* § 1232g(a)(4)(A). Section 552.026 of the Government Code provides that "information contained in education records of an educational agency or institution" may only be released under the Act in accordance with FERPA.

Information must be withheld from required public disclosure under FERPA only to the extent "reasonable and necessary to avoid personally identifying a particular student." See Open Records Decision Nos. 332 (1982), 206 (1978). We note that the handwritten statement of a student constitutes an education record for the purposes of FERPA because it would identify the student. See Open Records Decision No. 224 (1979) (finding student's handwritten comments protected under FERPA because they make identity of student easily traceable through handwriting, style of expression, or particular incidents related). Upon review, we find that portions of the submitted records identify, or were created by, district students and are "education records" for the purposes of FERPA. We note that under FERPA a student's parents or guardians have an affirmative right of access to that student's education records. 20 U.S.C. § 1232g(a)(1)(A); 34 C.F.R. § 99.3. Here the requestor is a parent of a district student. However, the district states that the requestor's child was not involved in any of the responsive incidents. Upon review of the submitted information, we agree that the none of it consists of the "education records" of the requestor's child, and thus, none of the information must be released to the requestor on that basis. Accordingly, we have marked the information that must be redacted pursuant to section 552.114 of the Government Code.

We note that some of the submitted information may be protected by section 552.117 of the Government Code.<sup>1</sup> Section 552.117(a)(1) 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

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<sup>1</sup>The Office of the Attorney General will raise a mandatory exception like section 552.117 on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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). In this case, you do not inform us nor provide documentation showing that the employees whose records are at issue timely elected confidentiality under section 552.024. Thus, for employees who timely elected to keep their personal information confidential, you must withhold this information, which we have marked, under section 552.117(a)(1) of the Government Code. The district may not withhold this information under section 552.117(a)(1) for employees who did not make a timely election to keep their information confidential.

In summary, you must withhold the information we have marked under section 552.114 of the Government Code. If the employees whose information is at issue timely elected to keep their personal information confidential, you must withhold this information, which we have marked, under section 552.117(a)(1) of the Government Code. If these employees did not make a timely election, the marked information must be released. As you do not raise any other exceptions against disclosure, 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

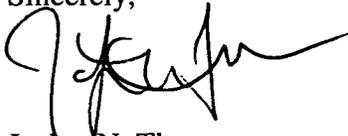
free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

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,



Jaclyn N. Thompson  
Assistant Attorney General  
Open Records Division

JNT/krl

Ref: ID# 250447

Enc. Submitted documents

c: Mr. Joseph L. Williams, II  
8413 Beaufort Court  
Fort Worth, Texas 76123  
(w/o enclosures)

MAY 23 2007

At 8:45 A.M.  
Amalia Rodriguez-Mendoza, Clerk

CAUSE NO. D-1-GN-06-001768

CROWLEY INDEPENDENT SCHOOL DISTRICT and GREG GIBSON, In His Official Capacity As Custodian of Public Records for CROWLEY INDEPENDENT SCHOOL DISTRICT,	§	IN THE DISTRICT COURT OF
Plaintiffs,	§	
	§	
	§	
	§	
	§	TRAVIS COUNTY, TEXAS
	§	
V.	§	
	§	
GREG ABBOTT, ATTORNEY GENERAL OF TEXAS,	§	
Defendant.	§	201 <sup>st</sup> JUDICIAL DISTRICT

**AGREED FINAL JUDGMENT**

On this date, the Court heard the parties' motion for an agreed final judgment. Plaintiffs Crowley Independent School District and Greg Gibson, in his official capacity as Custodian of Public Records for Crowley Independent School District (collectively "Crowley ISD"), and Defendant, Greg Abbott, Attorney General of Texas, appeared, by and through their respective attorneys, and announced to the Court that all matters of fact and things in controversy between them had been fully and finally compromised and settled. This cause is an action under the Public Information Act (PIA), Tex. Gov't Code ch. 552. The parties represent to the Court that, in compliance with Tex. Gov't Code § 552.325(c), the requestor, Mr. Joseph L. Williams, was sent reasonable notice of this setting and of the parties' agreement that Crowley ISD must withhold some of the information at issue; that the requestor was also informed of his right to intervene in the suit to contest the withholding of this information; and that the requestor has not informed the parties of his intention to intervene. Neither has the requestor filed a motion to intervene or appeared

today. After considering the agreement of the parties and the law, the Court is of the opinion that entry of an agreed final judgment is appropriate, disposing of all claims between these parties.

IT IS THEREFORE ADJUDGED, ORDERED AND DECLARED that:

1. Information regarding misconduct by Crowley ISD personnel involving requestor's child, specifically, the following documents:

- a) January 18, 2006, Memorandum (1 page)
- b) January 17, 2006, Memorandum (1 page)
- c) November 1, 2005, Memorandum (1 page)
- d) October 28, 2005, Memorandum (1 page)
- e) February 6, 2006, Memorandum (2 pages)

is confidential under Tex. Educ. Code Ann. § 21.355 and, therefore, is excepted from disclosure by Tex. Gov't Code Ann. § 552.101.

2. The remaining information, consisting of various correspondence, incident reports and statements, is not excepted from disclosure, and Crowley ISD shall release it to the requestor upon receipt of this judgment signed by the court, except for information that the Attorney General held was excepted from disclosure in Letter Ruling OR2006-04648.

3. All costs of court are taxed against the parties incurring the same;

4. All relief not expressly granted is denied; and

5. This Agreed Final Judgment finally disposes of all claims between Plaintiffs and Defendant and is a final judgment.

SIGNED this the 23 day of

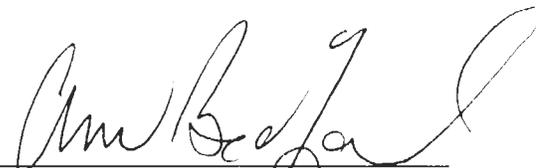
May, 2006

PRESIDING JUDGE

APPROVED:

  
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