



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 28, 2006

Ms. Ann Forbes  
Paralegal  
Fort Worth Independent School District  
100 North University Drive  
Fort Worth, Texas 76107

OR2006-08294

Dear Ms. Forbes:

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# 255208.

The Fort Worth Independent School District (the "district") received three requests for information pertaining to a named teacher. One of the requestors also seeks information pertaining to any other "district educators accused of mistreating or punishing students because they didn't attend classes on May 1." You state that the district will release some of the requested information. You claim that the remaining information is excepted from disclosure under sections 552.101, 552.108, 552.114, 552.116, and 552.135 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code 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 statute. Section 261.201(a) of the Family Code provides as follows:

- (a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

- (1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and
- (2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201(a). Although the submitted information refers to a separate Child Protective Services investigation, you do not explain, and the submitted information does not otherwise indicate, how these specific documents were used or developed in an investigation of child abuse or neglect for chapter 261 purposes. We therefore determine that section 261.201 is not applicable to the information at issue. Accordingly, the district may not withhold any of the submitted information under section 552.101 in conjunction with section 261.201 of the Family Code.

Section 552.101 also encompasses section 21.355 of the Education Code, which provides, “a document evaluating the performance of a teacher or administrator is confidential.” Educ. Code § 21.355. 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, this office also determined 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 the 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 serving as an administrator at the time of the evaluation. *Id.* Upon review, we agree that some of the submitted documents, which we have marked, fall within the scope of section 21.355 and must be withheld on that basis. *See Abbott v. North East Indep. Sch. Dist.*, No. 03-04-00744-CV, 2006 WL 1293545 (Tex. App.—Austin May 12, 2006, no pet. h.) (concluding that written reprimand constitutes an evaluation for purposes of section 21.355). We find, however, that the remaining submitted information does not evaluate the performance of a teacher as contemplated by section 21.355 of the Education Code. Therefore, the district may not withhold any of the remaining submitted information on this basis.

Next, we address your claim under section 552.101 in conjunction with the Family Educational Rights and Privacy Act of 1974 (“FERPA”). 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). This

office generally applies the same analysis under section 552.114 of the Government Code and FERPA. Open Records Decision No. 539 (1990).

Section 552.114 excepts from disclosure student records at an educational institution funded completely or in part by state revenue. *See* Gov't Code § 552.114. Section 552.026 of Government Code provides as follows:

This chapter does not require the release of information contained in education records of an educational agency or institution, except in conformity with the Family Educational Rights and Privacy Act of 1974, Sec. 513, Pub. L. No. 93-380, 20 U.S.C. Sec. 1232g.

*Id.* § 552.206. In Open Records Decision No. 634 (1995), this office concluded that (1) 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, and (2) an educational agency or institution that is state-funded may withhold from public disclosure information that is excepted from required public disclosure by section 552.114 as a "student record," insofar as the "student record" is protected by FERPA, without the necessity of requesting an attorney general decision as to that exception. 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 have marked the information that must be withheld pursuant to section 552.101 of the Government Code in conjunction with FERPA.

Next, you assert that the submitted information is protected under section 552.108 of the Government Code. Section 552.108(a)(1) generally excepts information held by a law enforcement agency that deals with the detection, investigation, or prosecution of crime, if release of the information would interfere with the detection, investigation, or prosecution of crime. *See* Gov't Code § 552.108(a)(1). A governmental body that claims information is excepted from disclosure under section 552.108 must reasonably explain how and why section 552.108 is applicable to the information. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986).

A school district is not a law enforcement agency. By its terms, section 552.108 applies only to a law enforcement agency or a prosecutor. This office has determined, however, that where an incident involving alleged criminal conduct is still under active investigation or prosecution, section 552.108 may be invoked by any proper custodian of information that relates to the incident. *See* Open Records Decision Nos. 474 (1987), 372 (1983) (where incident involving allegedly criminal conduct is still under active investigation or prosecution, section 552.108 may be invoked by any proper custodian of information relating to incident). Where a non-law enforcement agency has custody of information relating to a

pending case of a law enforcement agency, the agency having custody of the information may withhold the information under section 552.108 if the agency demonstrates that the information relates to the pending case and provides this office with a representation from the law enforcement entity that the law enforcement entity wishes to withhold the information. In this instance, the district has not provided any representation to indicate that a law enforcement agency wishes to withhold the information at issue. Therefore, the district may not withhold any of the submitted information under section 552.108 of the Government Code.

Next, we address your claim under section 552.116 of the Government Code. Section 552.116 provides as follows:

(a) An audit working paper of an audit of the state auditor or the auditor of a state agency, an institution of higher education as defined by Section 61.003, Education Code, a county, a municipality, or a joint board operating under Section 22.074, Transportation Code, is excepted from [public disclosure]. If information in an audit working paper is also maintained in another record, that other record is not excepted from [public disclosure] by this section.

(b) In this section:

(1) "Audit" means an audit authorized or required by a statute of this state or the United States, the charter or an ordinance of a municipality, an order of the commissioners court of a county, or a resolution or other action of a joint board described by Subsection (a) and includes an investigation.

(2) "Audit working paper" includes all information, documentary or otherwise, prepared or maintained in conducting an audit or preparing an audit report, including:

(A) intra-agency and interagency communications; and

(B) drafts of the audit report or portions of those drafts.

Gov't Code § 552.116. This section only excepts the audit working papers of certain types of entities. Because the district is neither the state auditor nor the auditor of a state agency or institution of higher education, section 552.116 is inapplicable to the district. Therefore, the district may not withhold any of the submitted information under section 552.116.

Next, we address your claim that portions of the submitted information are protected by section 552.135 of the Government Code. This section provides in relevant part:

(a) "Informer" means a student or former student or an employee or former employee of a school district who has furnished a report of another person's or persons' possible violation of criminal, civil, or regulatory law to the school district or the proper regulatory enforcement authority.

(b) An informer's name or information that would substantially reveal the identity of an informer is excepted from [required public disclosure].

*Id.* § 552.135(a), (b). Because the legislature limited the protection of section 552.135 to the identity of a person who reports a possible violation of "law," a school district that seeks to withhold information under that exception must clearly identify to this office the specific civil, criminal, or regulatory law that is alleged to have been violated. *See id.* § 552.301(e)(1)(A). Furthermore, section 552.135 only protects information that identifies an "informer" as defined by subsection (a). *See id.* § 552.135(a). Upon review, we find that you have not identified any individual in the submitted records who reported another person's possible violation of law or the specific civil, criminal, or regulatory law that is alleged to have been violated. *See id.* We therefore conclude that the district may not withhold any of the submitted information under section 552.135 of the Government Code.

Next, we note that the some of the documents you have designated for release in Enclosure 3 contain information that is or may be confidential under sections 552.101, 552.102, 552.117, and 552.147 of the Government Code.<sup>1</sup> We caution that the Act prescribes criminal penalties for the release of confidential information. *See Gov't Code* §§ 552.007, .352; *Open Records Decision No. 325 at 2 (1982)*.

Section 552.101 of the Government Code encompasses section 6103(a) of title 26 of the United States Code, which makes federal tax return information confidential. The term "return information" includes "the nature, source, or amount of income" of a taxpayer. 26 U.S.C. § 6103(b)(2). The W-4 forms in Enclosure 3 constitute federal tax return information that is confidential under section 6103(a) of title 26 of the United States Code and must be withheld under section 552.101 of the Government Code.

Next, we note that Enclosure 3 also includes an Employment Eligibility Verification Form I-9. Section 552.101 of the Government Code also encompasses section 1324a of title 8 of the United States Code, which provides that an Employment Eligibility Verification Form I-9 "may not be used for purposes other than for enforcement of this chapter" and for enforcement of other federal statutes governing crime and criminal investigations. *See* 8 U.S.C. § 1324a(b)(5); *see also* 8 C.F.R. § 274a.2(b)(4). The release of the submitted Form I-9 would be "for purposes other than for enforcement" of the applicable federal law. A Form I-9 may be released only for purposes of compliance with the federal laws and

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<sup>1</sup> This office will raise mandatory exceptions to disclosure on behalf of a governmental body, but ordinarily will not raise other exceptions. *See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987)*.

regulations governing the employment verification system. Therefore, the district must withhold the Form I-9 in Enclosure 3 under section 552.101 in conjunction with section 1324a of title 8 of the United States Code.

Next, we note that Enclosure 3 includes college transcripts. Section 552.102(b) of the Government Code excepts from public disclosure “a transcript from an institution of higher education maintained in the personnel file of a professional public school employee[.]” Gov’t Code § 552.102(b). This exception further provides, however, that “the degree obtained or the curriculum on a transcript in the personnel file of the employee” are not excepted from disclosure. *Id.*; *see also* Open Records Decision No. 526 (1989). Thus, except for those portions of the documents that reveal the degree obtained and the courses taken, the district must withhold the transcripts, which we have marked, under section 552.102(b) of the Government Code.

Next, we note that Enclosure 3 contains information that is potentially confidential under section 552.117(a)(1) of the Government Code. 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 timely elect to keep this information confidential pursuant to section 552.024 of the Government Code. Gov’t Code § 552.117(a)(1). We note that an individual’s personal post office box number is not a “home address” for purposes of section 552.117, and therefore may not be withheld under this section. *See* Open Records Decision No. 622 at 4 (1994) (purpose of section 552.117 is to protect public employees from being harassed at home); *see also* Open Records Decision No. 658 at 4 (1998) (statutory confidentiality provision must be express and cannot be implied). You do not inform us whether the district employee at issue timely elected to keep information confidential. We therefore determine that if the individual at issue timely elected to keep such information confidential pursuant to section 552.024, the district must withhold the information we have marked in Enclosure 3 pursuant to section 552.117(a)(1). If, however, the district employee did not timely elect to keep her information confidential, the district may not withhold this information under section 552.117(a)(1).

Regardless of the applicability of section 552.117, section 552.147 of the Government Code provides that “[t]he social security number of a living person is excepted from” required public disclosure under the Act. Gov’t Code § 552.147. Therefore, if section 552.117 is not applicable, the district must still withhold the social security number we have marked in Enclosure 3 under section 552.147 of the Government Code.<sup>2</sup>

Finally, we note that some of the information in Enclosure 3 indicates that it is protected by copyright. A custodian of public records must comply with the copyright law and is not

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<sup>2</sup>We note that section 552.147(b) of the Government Code authorizes a governmental body to redact a living person’s social security number from public release without the necessity of requesting a decision from this office under the Act.

required to furnish copies of records that are copyrighted. Attorney General Opinion JM-672 (1987). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.* If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit. *See* Open Records Decision No. 550 (1990).

In summary, in Enclosures 2 and 2.1, the district must withhold (1) the information we have marked under section 21.355 of the Education Code in conjunction with section 552.101 of the Government Code; and (2) the marked student information under FERPA. In Enclosure 3, the district must withhold (1) the W-4 forms under section 6103(a) of title 26 of the United States Code in conjunction with section 552.101 of the Government Code; (2) the Form I-9 under section 1324a of title 8 of the United States Code in conjunction with section 552.101 of the Government Code; and (3) the transcripts we have marked under section 552.102(b) of the Government Code. The district must also withhold the information we have marked under section 552.117(a)(1) if the individual at issue timely elected to keep such information confidential pursuant to section 552.024 of the Government Code. If, however, the district employee did not timely elect to keep her information confidential, then the district must withhold the social security number we have marked in Enclosure 3 under section 552.147 of the Government Code. The remaining submitted information must be released in accordance with copyright law.

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

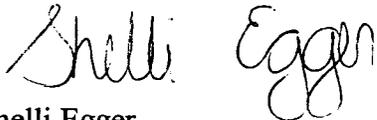
requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

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,



Shelli Egger  
Assistant Attorney General  
Open Records Division

SE/sdk

Ref: ID# 255208

Enc. Submitted documents

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