



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 30, 2007

Ms. Laura M. Jamouneau
Walsh, Anderson, Brown, Schulze & Aldridge, P.C.
P.O. Box 2156
Austin, Texas 78768

OR2007-04964

Dear Ms. Jamouneau:

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# 277452.

The Kermit Independent School District (the "district"), which you represent, received a request for personnel files of any district employee suspended, fired, or placed on administrative leave during a specified period of time. You state that the district has released some of the responsive information. You state that social security numbers have been redacted from the submitted information under section 552.147 of the Government Code.¹ You claim that the submitted information is excepted from disclosure under sections 552.101, 552.117, 552.130, and 552.137 of the Government Code.² 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. Section 552.101 encompasses federal statutes. The submitted information contains an I-9 form (Employment Eligibility Verification), which is governed by

¹Section 552.147(b) 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.

²We note that section 552.024 of the Government Code is not an exception to public disclosure. Rather, this section prescribes procedures that enable an official or employee of a governmental body to request that certain information be withheld from the public under section 552.117.

section 1324a of Title 8 of the United States Code. This section provides that an I-9 form and “any information contained in or appended to such form, 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). Release of the form in this instance would be “for purposes other than for enforcement” of the referenced federal statutes. Accordingly, we conclude that the I-9 form and its attachment, which we have marked, are confidential and may only be released in compliance with the federal laws and regulations governing the employment verification system.

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.” Educ. Code § 21.355. 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 or an administrator. *See* Open Records Decision No. 643 (1996). In Open Records Decision No. 643, we determined that for purposes of section 21.355, the word “teacher” means a person who 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 who is engaged in the process of teaching, as that term is commonly defined, at the time of the evaluation. *See Id.* at 4.

You claim that the submitted information contains evaluations of an individual who held a teaching certificate and was employed as a teacher at the time of the evaluations. Based on your representation and our review, we agree that these evaluations, which you have marked, are confidential under section 21.355 of the Education Code and thus must be withheld from disclosure under section 552.101 of the Government Code.

Next, we address your claim that portions of the submitted information are excepted from disclosure under 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. Gov’t Code § 552.117(a)(1). *See also* Open Records Decision No. 670 (2001) (extending section 552.117(a)(1) exception to personal cellular phone number and personal pager number of employee who elects to withhold home phone number in accordance with 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 the 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. You state that the employee in question did timely choose not to allow public access to his home and cellular telephone numbers and his home address. Accordingly, we agree that the

district must withhold the home and cellular telephone numbers and the address you have marked pursuant to section 552.117.

Finally, section 552.137 of the Government Code 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). Under section 552.137, a governmental body must withhold the e-mail address of a member of the general public, unless the individual to whom the e-mail address belongs has affirmatively consented to its public disclosure. *See id.* § 552.137(b). You state that the individual whose e-mail address is at issue has not consented to release of the e-mail address. Accordingly, the district must withhold the e-mail address you have marked under section 552.137.

In summary, the district must withhold the marked I-9 form and its attachment under section 552.101 of the Government Code in conjunction with section 1324a of title 8 of the United States Code. The district must withhold the evaluations you have marked under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code. The home and cellular phone numbers and the home address you have marked must be withheld under section 552.117 of the Government Code. The e-mail address you have marked must be withheld under section 552.137 of the Government Code. The remaining submitted information must be released.³

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

³As our ruling is dispositive we need not address your remaining argument.

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,



M. Alan Akin
Assistant Attorney General
Open Records Division

AA/eb

Ref: ID# 277452

Enc. Submitted documents

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(w/o enclosures)