



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 5, 2007

Mr. Bret Jimerson
Executive Director of Human Resources and General Counsel
White Settlement Independent School District
401 South Cherry Lane
White Settlement, Texas 76108-2518

OR2007-07025

Dear Mr. Bret Jimerson:

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# 280242.

The White Settlement Independent School District (the "district") received a request for the personnel file and settlement compensation records pertaining to a named individual. You state that the district will release some of the requested information. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.117, and 552.130 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. Section 552.101 encompasses information made confidential by section 21.355 of the Education Code. Section 21.355 provides that "[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. See Open Records Decision No. 643 (1996). In that opinion, this office determined that the word "administrator" in section 21.355 means a person who is required to and does in fact hold an administrator's certificate under subchapter B of chapter 21 of the Education Code and

is performing the functions of an administrator, as that term is commonly defined, at the time of the evaluation. *Id.* The Third Court of Appeals has held that a written reprimand constitutes an evaluation for purposes of section 21.355. *See Abbott v. North East Indep. Sch. Dist.*, 212 S.W.3rd 364 (Tex. App.—Austin, 2006).

You contend that section 21.355 is applicable to Exhibits D, I, J, K, L, M, N, and O. Exhibit D consists of correspondence from the individual at issue to the district related to the individual seeking employment with the district. After reviewing your arguments and the information at issue, we find you have failed to establish that Exhibit D consists of a performance evaluation for purposes of section 21.355. Accordingly, section 21.355 is not applicable to this exhibit. Further you do not inform us whether the employee who is the subject of the evaluations in Exhibit I, J, K, L, M, N, and O held an administrator's certificate under subchapter B of chapter 21 of the Education Code and was performing the functions of an administrator at the time of each evaluation. Nevertheless, to the extent that the employee in question held an administrator's certificate and was functioning as an administrator at the time of a given evaluation, we find that the evaluations in Exhibits I, J, K, L, M, N, and O are confidential under section 21.355 of the Education Code and must be withheld from disclosure under section 552.101 of the Government Code. To the extent the marked evaluations do not satisfy these criteria, they may not be withheld under section 552.101 in conjunction with section 21.355.

Section 552.101 also encompasses the doctrine of common-law privacy, which protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be demonstrated. *Id.* at 681-82. A compilation of an individual's criminal history is highly embarrassing information, the publication of which would be highly objectionable to a reasonable person. *Cf. United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (when considering prong regarding individual's privacy interest, court recognized distinction between public records found in courthouse files and local police stations and compiled summary of information and noted that individual has significant privacy interest in compilation of one's criminal history). Furthermore, we find that a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. Therefore, to the extent that the district maintains law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, the district must withhold such information under section 552.101 in conjunction with common-law privacy.

Section 552.102(b) of the Government Code excepts from 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 section 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. Thus, with the exception of the employee's name, courses taken, and degree obtained, the district must withhold the submitted transcripts that we have marked in Exhibits D, E, F, and G pursuant to section 552.102(b).

Next, you assert that some of the remaining information is excepted from disclosure under section 552.117. Section 552.117 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 request that this information be kept confidential under section 552.024 of the Government Code. *See id.* § 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 was received by the governmental body. Whether a particular piece of information is public must be determined at the time the request is received by the governmental body. *See* Open Records Decision No. 530 at 5 (1989). The submitted documents contain an election form in which the employee whose information is at issue elected to keep his home address and phone number confidential prior to the date on which the city received this request. Accordingly, the district must withhold the information we have marked pursuant to section 552.117(a)(1) of the Government Code.

In summary, you must withhold Exhibits I, J, K, L, M, N, and O under section 552.101 in conjunction with section 21.355 of the Education Code. To the extent that the district maintains law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, the district must withhold such information under section 552.101 in conjunction with common-law privacy. You must withhold the information we have marked under section 552.102(b) and section 552.117. 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,



Justin D. Gordon
Assistant Attorney General
Open Records Division

JDG/eeg

Ref: ID# 280242

Enc. Submitted documents

c: Opie Auten
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Fort Worth, Texas 76108
(w/o enclosures)