



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 9, 2007

Mr. Ray Rushing  
General Counsel  
Texas State Technical College System  
3801 Campus Drive  
Waco, Texas 76705

OR2007-08627

Dear Mr. Rushing:

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# 283234.

Texas State Technical College (the "college") received a request for "any contract and related documentation that resulted from any mediation during the month of April 2007 involving [a named person], instructor at [the college]." You claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note that a portion of the submitted information is subject to required public disclosure under section 552.022 of the Government Code, which provides in relevant part:

the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

(18) a settlement agreement to which a governmental body is a party[.]

Gov't Code § 552.022(a)(18). The submitted information contains a mediation settlement agreement between an employee of the college and a student of the college. Therefore, this mediation agreement must be released unless the information is expressly made confidential

under other law. You claim that this information is confidential under section 552.101 of the Government Code. This exception constitutes other law for purposes of section 552.022; therefore, we will consider the applicability of section 552.101 to the mediation agreement and the remaining 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 that is made confidential by statute. You claim that the submitted information is confidential under section 154.073 of the Civil Practice and Remedies Code. Section 154.073 provides in relevant part:

(a) Except as provided by Subsections (c), (d), (e), and (f)<sup>1</sup> a communication relating to the subject matter of any civil or criminal dispute made by a participant in an alternative dispute resolution procedure, whether before or after the institution of formal judicial proceedings, is confidential, is not subject to disclosure, and may not be used as evidence against the participant in any judicial or administrative proceeding.

(b) Any record made at an alternative dispute resolution procedure is confidential, and the participants or the third party facilitating the procedure may not be required to testify in any proceedings relating to or arising out of the matter in dispute or be subject to process requiring disclosure of confidential information or data relating to or arising out of the matter in dispute.

(d) A final written agreement to which a governmental body, as defined by Section 552.003, Government Code, is a signatory that is reached as a result of a dispute resolution procedure conducted under this chapter is subject to or excepted from required disclosure in accordance with Chapter 552, Government Code.

Civ. Prac. & Rem. Code § 154.073(a), (b), (d). Further, in Open Records Decision No. 658 (1998), this office found that communications during the formal settlement process were intended to be confidential. Open Records Decision No. 658 at 4: *see also* Gov’t Code § 2009.054(c). You explain that the submitted information consists of a mediation agreement, an outcome form, and confidentiality forms regarding a mediated dispute between a college employee and a student. Upon review, we agree that the outcome form and confidentiality forms are records made at an alternative dispute resolution pursuant to section 154.073(b). Accordingly, these documents, which we have marked, must be withheld under section 552.101 of the Government Code in conjunction with section 154.073 of the Civil Practice and Remedies Code. As to the remaining mediation agreement, it is a

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<sup>1</sup>Subsections 154.073(c), (e), and (f) are inapplicable in this instance.

final written agreement to which the college is a signatory, therefore subsection (d) of section 154.073 controls. Subsection (d), however, does not itself make information confidential, but instead requires the governmental body to raise additional exceptions under the Act against disclosure.

Although you do not raise any additional exceptions against disclosure, we note that a portion of the mediation agreement may be excepted from public disclosure under section 552.117(a)(1) of the Government Code.<sup>2</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 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 neither inform us nor provide documentation showing that the employee whose information is at issue timely elected confidentiality under section 552.024. Nevertheless, if the employee timely elected to keep his personal information confidential, you must withhold this information, which we have marked, under section 552.117(a)(1) of the Government Code. The college may not withhold this information under section 552.117(a)(1) if the employee did not make a timely election to keep the information confidential.

Finally, we note that the records may contain student information. Recently, the United States Department of Education Family Policy Compliance Office informed this office that the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232(a), does not permit state and local educational authorities to disclose to this office, without parental consent, unredacted, personally identifiable information contained in education records for the purpose of our review in the open records ruling process under the Act.<sup>3</sup> Consequently, state and local educational authorities that receive a request for education records from a member of the public under the Act must not submit education records to this office in unredacted form, that is, in a form in which "personally identifiable information" is disclosed. *See* 34 C.F.R. § 99.3 (defining "personally identifiable information"). You may have submitted, among other things, unredacted education records for our review. Because

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<sup>2</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).

<sup>3</sup>A copy of this letter may be found on the Office of the Attorney General's website at [http://www.oag.state.tx.us/opinopen/og\\_resources.shtml](http://www.oag.state.tx.us/opinopen/og_resources.shtml).

our office is prohibited from reviewing these education records to determine whether appropriate redactions under FERPA have been made, we will not address the applicability of FERPA to any of the submitted records. Such determinations under FERPA must be made by the educational authority in possession of the education records.<sup>4</sup>

In summary, this ruling does not address the applicability of FERPA to the submitted information. Should the college determine that all or portions of the submitted information consists of “education records” that must be withheld under FERPA, the college must dispose of that information in accordance with FERPA, rather than the Act. The college must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 154.073(b) of the Civil Practice and Remedies Code. If the employee timely elected to keep his personal information confidential, you must withhold this information, which we have marked, under section 552.117(a)(1) of the Government Code. The college may not withhold this information under section 552.117(a)(1) if the employee did not make a timely election to keep the information confidential. 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,

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<sup>4</sup>In the future, if the college does obtain parental consent to submit unredacted education records and the college seeks a ruling from this office on the proper redaction of those education records in compliance with FERPA, we will rule accordingly.

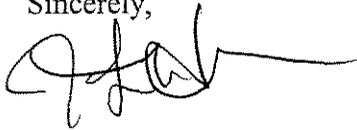
toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

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/ma

Ref: ID# 283234

Enc. Submitted documents

c: Ms. Shari Barnes  
6509 Westrock  
Fort Worth, Texas 76133  
(w/o enclosures)