



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 13, 2007

Mr. Michael P. Mondville  
General Counsel  
Windham School District  
P.O. Box 40  
Huntsville, Texas 77342-0040

OR2007-16481

Dear Mr. Mondville:

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# 297203.

The Windham School District (the "district") received a request for four categories of information related to the district's Deaf Education Program. You state that a portion of the requested information will be made available to the requestor. You claim that portions of the submitted information are excepted from disclosure under sections 552.101, 552.117, 552.130, and 552.147 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from public 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 protected by other statutes, such as 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. Open Records Decision No. 643 (1996).

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<sup>1</sup>Although you did not timely raise sections 552.130 and 552.147 of the Government Code, these provisions can constitute compelling reasons to withhold information, and we will address your arguments under these exception. *See* Gov't Code §§ 552.301, . 302.

You contend that a portion of the submitted information is confidential under section 21.355 of the Education Code. You state, and provide documentation showing, that the teacher at issue held the appropriate certificate at the time of the evaluations. However, you also inform us that the district is governed by chapter 19 of the Education Code. Section 19.004 of the Education Code enumerates the governance, limitations on powers, and duties of the district. Section 19.004(a) states that “the district shall be governed as provided by this chapter and policies established by the board. Unless otherwise specifically provided, a provision of this code applying to school districts does not apply to the district.” Educ. Code § 19.004(a). Although you acknowledge that section 21.355 “is not specifically provided for in Chapter 19,” you argue that “[t]he effect of section 19.004, if strictly applied to teacher evaluations, is absurd,” and that “individual teachers should not lose protections based on their selection of employers. It cannot be assumed that the legislature sought such an unjust and unreasonable approach.”

We disagree. Because section 21.355 is a provision of the Education Code that applies to school districts other than the district, we find that, according to its plain language, section 19.004(a) of the Education Code precludes the application of section 21.355 to the evaluations at issue. Thus, we determine that the evaluations may not be withheld under section 21.355. Furthermore, chapter 19 does not specifically provide for the confidentiality of evaluations conducted within the district. Therefore, we conclude that the evaluations at issue are not confidential and may not be withheld under section 552.101 of the Government Code. As you raise no further arguments against their disclosure, the evaluations must be released to the requestor.

You claim that the submitted documents contain information that is excepted under section 552.117 of the Government Code. Section 552.117(a)(1) excepts from disclosure the current and former home addresses, telephone numbers, social security numbers, personal cellular 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 of the Government Code. Gov’t Code § 552.117(a)(1). Whether a particular piece of information is protected under 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). You provide documentation showing that the employee at issue elected to keep her information confidential. Thus, the district must withhold the information we have marked pursuant to section 552.117(a)(1).<sup>2</sup>

You also raise section 552.130 of the Government Code for a portion of the submitted information. Section 552.130 excepts from disclosure “information [that] relates to . . . a motor vehicle operator’s or driver’s license or permit issued by an agency of this state [or] a motor vehicle title or registration issued by an agency of this state.” Gov’t Code § 552.130.

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<sup>2</sup>As our ruling is dispositive, we need not address your argument under section 552.147 for this information.

Accordingly, the district must withhold the Texas driver's license and motor vehicle record information we have marked pursuant to section 552.130 of the Government Code.

Next, we note that a portion of the remaining information is excepted under section 552.137 of the Government Code.<sup>3</sup> Section 552.137 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 id.* § 552.137(a)-(c). The e-mail address we have marked in the remaining information is not of a type specifically excluded by section 552.137(c). Therefore, the district must withhold the e-mail address we have marked in accordance with section 552.137 unless the district receives consent for its release.

In summary, the district must withhold the information we have marked under sections 552.117 and 552.130. The district must withhold the e-mail address we have marked under section 552.137 unless the district receives consent for its release. 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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, 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

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<sup>3</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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 challenge 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,



Jordan Johnson  
Assistant Attorney General  
Open Records Division

JJ/jb

Ref: ID# 297203

Enc. Submitted documents

c: Mr. John F. McCormick  
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