



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 21, 2007

Ms. Amanda M. Bigbee
Henslee Schwartz, L.L.P.
For Carroll Independent School District
306 West 7th Street, Suite 1045
Fort Worth, Texas 76102

OR2007-16905

Dear Ms. Bigbee:

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# 298692.

The Carroll Independent School District (the "district"), which you represent, received a request for information pertaining to the renovation of Carroll High School and the personnel file of a named employee. You state that some of the requested information has been made available to the requestor. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.117, 552.130, and 552.137 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 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. In addition, the court has concluded a written reprimand constitutes an evaluation for purposes of section 21.355 because "it reflects the principal's judgment regarding [a teacher's] actions, gives corrective direction, and provides for further review." *North East Indep. Sch. Dist. v. Abbott*, 212 S.W.3d 364 (Tex. App.—Austin 2006, no pet.). 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). This office has 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. Open Records Decision No. 643. We also 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.*

You contend that Exhibit A is confidential under section 21.355. Having considered your argument and reviewed the information at issue, we find that most of the information in Exhibit A constitutes evaluations of a teacher or an administrator for the purposes of section 21.355. We therefore conclude that the district must withhold information in Exhibit A under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code. We have marked the information in Exhibit A that must be released to the requestor.

Section 552.102(b) excepts from disclosure all information from transcripts of a professional public school employee other than the employee's name, the courses taken, and the degree obtained. Gov't Code § 552.102; Open Records Decision No. 526 (1989). Thus, except for the information that reveals the employee's name, the courses taken, and the degree obtained, the transcripts you have marked are confidential pursuant to section 552.102(b).

Section 552.117(a)(1) of the Government Code 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. Section 552.117 also encompasses a personal cellular telephone number, provided that a governmental body does not pay for the cellular phone service. *See* Open Records Decision No. 506 at 5-6 (1988) (Gov't Code § 552.117 not applicable to cellular mobile phone numbers paid for by governmental body and intended for official use). Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it is received. *See* Open Records Decision No. 530 at 5 (1989). Therefore, the district may only withhold information under section 552.117 on behalf of current or former officials or employees who made a request for confidentiality under section 552.024 prior to the date on which the request for this information was received. In this case you inform us, and provide documentation, that the employee whose personal information is at issue timely elected confidentiality under section 552.024. Accordingly, we agree that the district must withhold most of the information you have marked under section 552.117(a)(1) of the Government Code. We note that section 552.117 does not apply to an individual's work phone number. We have marked the information that must be released to the requestor.

You assert that some of the submitted information is excepted under section 552.130 of the Government Code. 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." Gov't Code §552.130(a). By its terms, section 552.130 only applies to motor vehicle records issued by the State of Texas. In this case, the information you seek to withhold was issued by a state other than Texas, and is therefore not excepted under section 552.130. Thus, the district must release this information to the requestor.

You also state that section 552.137 of the Government Code is applicable to some of the requested information. Section 552.137 states in part that “[e]xcept as otherwise provided by this section, an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under this chapter.” Gov’t Code § 552.137(a). Section 552.137 excepts from public disclosure certain e-mail addresses of members of the public that are provided for the purpose of communicating electronically with a governmental body, unless the owner of the e-mail address has affirmatively consented to its public disclosure. *See id.* § 552.137(b). The types of e-mail addresses listed in section 552.137(c) may not be withheld under this exception. *See id.* § 552.137(c). Likewise, section 552.137 is not applicable to an institutional e-mail address, an Internet website address, or an e-mail address that a governmental entity maintains for one of its officials or employees. Unless the owners of the e-mail addresses at issue affirmatively consented to their public disclosure, the district must withhold the marked e-mail addresses, except as we have marked for release, pursuant to section 552.137.

In summary, except as we have marked for release the district must withhold the information in Exhibit A under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code. Except for the information that reveals the employee’s name, the courses taken, and the degree obtained, the district must withhold the transcripts you have marked under section 552.102(b) of the Government Code. The district must withhold the information you have marked under section 552.117(a)(1) of the Government Code, except as we have marked otherwise. The district must withhold the marked e-mail addresses, except as we have marked for release, pursuant to section 552.137. The remaining information must be released to the requestor.

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

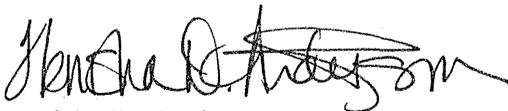
will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll 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,



Henisha D. Anderson
Assistant Attorney General
Open Records Division

HDA/mcf

Ref: ID# 298692

Enc. Submitted documents

c: Mr. Jessamy Brown
Fort Worth Star-Telegram
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(w/o enclosures)