



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 20, 2008

Ms. Susan K. Bohn
General Counsel
Lake Travis Independent School District
3322 Ranch Road 620 South
Austin, Texas 78738

OR2008-02305

Dear Ms. Bohn:

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# 302644.

The Lake Travis Independent School District (the "district") received eight requests from the same requestor, including requests for cellular telephone billing and payment records, and evaluations of two district administrators.¹ You state that the district has provided, or made available for review by the requestor, some of the requested information. You claim that some of the remaining requested information is excepted from disclosure under sections 552.101 and 552.117 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also considered comments submitted by an attorney representing one of the named administrators. *See Gov't Code* § 552.304 (interested party may submit comments stating why information should or should not be released).

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 protected by other statutes. Section 21.355 of the Education Code provides that "[a] document evaluating the performance of a teacher or administrator is confidential." 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 an "administrator" for purposes of section 21.355 means a person who (1) is required to and does in fact hold

¹We note that the requestor has agreed to the redaction of information subject to section 552.136 of the Government Code. Accordingly, any of this information within the submitted documents is not responsive to the present request and we do not address such information in this ruling. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex.Civ.App.—San Antonio 1978, writ dismissed).

an administrator's certificate under subchapter B of chapter 21 of the Education Code and (2) is performing the functions of an administrator, as that term is commonly defined, at the time of the evaluation. *Id.*; see *Abbott v. North East Indep. Sch. Dist.*, No. 03-04-00744-CV, 2006 WL 1293545 (Tex. App.—Austin May 12, 2006, no pet.) (concluding that written reprimand constitutes evaluation for purposes of Educ. Code § 21.355). You contend that the documents in Tabs 1 and 3 contain information that is confidential under section 21.355 of the Education Code. You have submitted copies of each individuals' Texas Educator Certificate. Upon review of the documents at issue and the information you have submitted, we agree that the information in Tabs 1 and 3 evaluates the performance of administrators and is subject to section 21.355 of the Education Code. Accordingly, the district must withhold the information in Tabs 1 and 3 on this basis.

Section 552.117 of the Government Code excepts from disclosure the home address, personal telephone number, social security number, and family member information of current or former 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). 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) (section 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 made. See Open Records Decision No. 530 at 5 (1989). The district may only withhold information under section 552.117(a)(1) on behalf of current or former employees who made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. You have marked home telephone numbers and personal cellular phone numbers belonging to current district employees. You state that the employees in question timely elected under section 552.024 to keep their personal information confidential. Based on your representations and our review of the submitted information, we find that the district must withhold the information you have marked in Tab 5 pursuant to section 552.117 of the Government Code.

In summary, the district must withhold the information in Tabs 1 and 3 pursuant to section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code. The district must withhold the information you have marked in Tab 5 pursuant to section 552.117 of the Government Code.

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,

Nancy E. Griffiths
Assistant Attorney General
Open Records Division

NEG/jb

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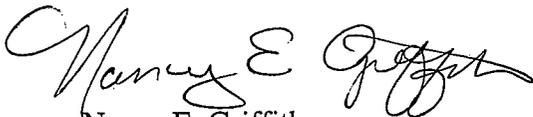
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Nancy E. Griffiths
Assistant Attorney General
Open Records Division

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Ref: ID# 302644

Enc. Submitted documents

c: Mr. David Lovelace
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Austin, Texas 78734
(w/o enclosures)