



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 11, 2008

Ms. Nicole L. Edgar
Gale, Wilson, & Sanchez
115 East Travis, 19th Floor
San Antonio, Texas 78205

OR2008-04876

Dear Ms. Edgar:

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# 307117.

The South San Antonio Independent School District (the "district"), which you represent, received three requests for the personnel file of a named individual. Two of the requestors also request information regarding the investigation into inappropriate conduct of the named individual. You state that you have released information to two of the requestors. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.108, and 552.117 of the Government Code. We have considered the exceptions you claim and reviewed the information you have submitted.

Section 552.108(a)(1) of the Government Code generally excepts from disclosure information held by a law enforcement agency that deals with the detection, investigation, or prosecution of crime, if release of the information would interfere with the detection, investigation, or prosecution of crime. *See* Gov't Code § 552.108(a)(1). A governmental body that claims information is excepted from disclosure under section 552.108 must reasonably explain how and why section 552.108 is applicable to the information. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986).

A school district is not a law enforcement agency. By its terms, section 552.108 applies only to a law enforcement agency or a prosecutor. This office has determined, however, that where an incident involving alleged criminal conduct is still under active investigation or prosecution, section 552.108 may be invoked by any proper custodian of information that

relates to the incident. *See* Open Records Decision Nos. 474 (1987), 372 (1983) (where incident involving allegedly criminal conduct is still under active investigation or prosecution, section 552.108 may be invoked by any proper custodian of information relating to incident). Where a non-law enforcement agency has custody of information relating to a pending case of a law enforcement agency, the agency having custody of the information may withhold the information under section 552.108 if the agency demonstrates that the information relates to the pending case and provides this office with a representation from the law enforcement entity that the law enforcement entity wishes to withhold the information. In this instance, the district has not provided our office with any representation to indicate that a law enforcement agency wishes to withhold the information at issue. Therefore, the district may not withhold any of the submitted information under section 552.108 of the Government Code.

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. You claim that the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), 42 U.S.C. §§ 1320d-1320d-8, excepts the submitted information from disclosure. At the direction of Congress, the Secretary of Health and Human Services ("HHS") promulgated regulations setting privacy standards for medical records, which HHS issued as the Federal Standards for Privacy of Individually Identifiable Health Information. *See* HIPAA, 42 U.S.C. § 1320d-2 (Supp. IV 1998) (historical & statutory note); Standards for Privacy of Individually Identifiable Health Information, 45 C.F.R. Pts. 160, 164 ("Privacy Rule"); *see also* Attorney General Opinion JC-0508 at 2 (2002). These standards govern the releasability of protected health information by a covered entity. *See* 45 C.F.R. pts. 160, 164. Under these standards, a covered entity may not use or disclose protected health information, except as provided by parts 160 and 164 of the Code of Federal Regulations. 45 C.F.R. § 164.502(a).

This office addressed the interplay of the Privacy Rule and the Act. *See* Open Records Decision No. 681 (2004). In that decision, we noted that section 164.512 of title 45 of the Code of Federal Regulations provides that a covered entity may use or disclose protected health information to the extent that such use or disclosure is required by law and the use or disclosure complies with and is limited to the relevant requirements of such law. *See* 45 C.F.R. § 164.512(a)(1). We further noted that the Act "is a mandate in Texas law that compels Texas governmental bodies to disclose information to the public." *See* ORD 681 at 8; *see also* Gov't Code §§ 552.002, .003, .021. We therefore held that disclosures under the Act come within section 164.512(a) of title 45 of the Code of Federal Regulations. The Third Court of Appeals has also held that disclosures under the Act come within section 164.512(a). *See Abbott v. Tex. Dep't of Mental Health & Mental Retardation*, 212 S.W.3d 648, 662 (Tex. App.—Austin 2006, no. pet.). Consequently, the Privacy Rule does not make information confidential for the purpose of section 552.101 of the Government Code. ORD 681 at 9; *see also* Open Records Decision No. 478 (1987) (as general rule, statutory confidentiality requires express language making information confidential). Because the Privacy Rule does not make confidential information that is subject to disclosure

under the Act, the district may withhold protected health information from the public only if the information is confidential under other law or an exception in subchapter C of the Act applies.

Section 552.101 also encompasses article 20.02 of the Code of Criminal Procedure, which provides in part that “[t]he proceedings of the grand jury shall be secret.” Crim. Proc. Code art. 20.02(a). The district asserts that the submitted information was presented to the grand jury. The district also asserts that release of the submitted information cannot be disclosed except by court order. We note, however, that the submitted information consists of a personnel file that the district compiled in the normal course of business. The requestors did not request records subpoenaed by a grand jury; they requested records the district normally maintains. The fact that certain records may have been subpoenaed by a grand jury does not make the records confidential under article 20.02. We therefore conclude that the district may not withhold any of the submitted information under section 552.101 in conjunction with article 20.02(a) of the Code of Criminal Procedure. *Cf.* ORD 513 at 4 (fact that information collected or prepared by another person or entity is submitted to grand jury does not necessarily mean that such information is in grand jury’s constructive possession when the same information is also held in other person’s or entity’s own capacity).

Section 552.101 also encompasses federal law. The submitted information includes I-9 forms, which are governed by section 1324a of title 8 of the United States Code. This section provides that this form “may not be used for purposes other than for enforcement of this chapter” and for enforcement of other federal statutes governing crime and criminal investigations. 8 U.S.C. § 1324a(b)(5). Release of these documents under the Act would be “for purposes other than for enforcement” of the referenced federal statute. Accordingly, we conclude that the submitted I-9 forms are confidential for purposes of section 552.101 of the Government Code and may only be released in compliance with the federal laws and regulations governing the employment verification system.

Section 552.101 also encompasses section 6103(a) of title 26 of the United States Code. Prior decisions of this office have held that section 6103(a) of title 26 of the United States Code renders tax return information confidential. Attorney General Opinion H-1274(1978) (tax returns); Open Records Decision Nos. 600 (1992) (W-4 forms), 226 (1979) (W-2 forms). Section 6103(b) defines the term “return information” as “a taxpayer’s identity, the nature, source, or amount of income, payments, tax withheld, deficiencies, overassessments or tax payments . . . or any other data, received by, recorded by, prepared by, furnished to, or collected by the Secretary [of the Internal Revenue Service] with respect to a return . . . or the determination of the existence, or possible existence, of liability . . . for any tax, . . . penalty, . . . , or offense[.]” *See* 26 U.S.C. § 6103(b)(2)(A). Federal courts have construed the term “return information” expansively to include any information gathered by the Internal Revenue Service regarding a taxpayer’s liability under title 26 of the United States Code. *See Mallas v. Kolak*, 721 F. Supp 748, 754 (M.D.N.C. 1989), *aff’d in part*, 993 F.2d 1111 (4th Cir. 1993).

Subsections (c) and (e) of section 6103 are exceptions to the confidentiality provisions of section 6103(a) and provide for disclosure of tax information to the taxpayer or the taxpayer's designee. *See* 26 U.S.C. § 6103(c), (e)(1)(A)(i) (tax return information may be disclosed to taxpayer), (e)(7) (information may be disclosed to any person authorized by subsection(e) to obtain such information if Secretary of Treasury determines such disclosure would not seriously impair tax administration); *see also Lake v. Rubin*, 162 F.3d 113 (D.C. Cir. 1998) (26 U.S.C. § 6103 represents exclusive statutory route for taxpayer to gain access to own return information and overrides individual's right of access under the federal Freedom of Information Act). Section 6103(c) provides that, unless the Secretary of Treasury determines that disclosure would seriously impair tax administration, tax record information may be released to any person or persons as the taxpayer may designate in a consent to such disclosure. *See* 26 U.S.C. § 6103(c). We note that one of the requestors represents the individual whose tax information is at issue. Therefore, pursuant to section 6103(c) of title 26 of the United States Code, the district must release the marked W-2 and W-4 forms in response to the Mangum request, if this requestor's client has consented to the disclosure of his tax record information to his attorney and the Secretary of Treasury determines that such disclosure would not seriously impair federal tax administration. Otherwise, the submitted W-2 and W-4 forms are confidential under section 6103 of title 26 of the United States Code and must be withheld from all of the requestors under section 552.101 of the Government Code. In either event, the district must withhold these forms from the remaining two requestors pursuant to section 552.101 in conjunction with federal law.

Section 552.101 also encompasses the Family Medical Leave Act (the "FMLA"), section 2654 of title 29 of the United States Code. Section 825.500 of chapter V of title 29 of the Code of Federal Regulations identifies the record-keeping requirements for employers that are subject to the FMLA. Subsection (g) of section 825.500 states that

[r]ecords and documents relating to medical certifications, recertifications or medical histories of employees or employees' family members, created for purposes of FMLA, shall be maintained as confidential medical records in separate files/records from the usual personnel files, and if ADA is also applicable, such records shall be maintained in conformance with ADA confidentiality requirements[], except that:

- (1) Supervisors and managers may be informed regarding necessary restrictions on the work or duties of an employee and necessary accommodations;
- (2) First aid and safety personnel may be informed (when appropriate) if the employee's physical or medical condition might require emergency treatment; and

(3) Government officials investigating compliance with FMLA (or other pertinent law) shall be provided relevant information upon request.

29 C.F.R. § 825.500(g). We note that a portion of the submitted documents is confidential under section 825.500 of title 29 of the Code of Federal Regulations. Further, we find that none of the release provisions of the FMLA apply to this information. The district must withhold the information we have marked under section 552.101 of the Government Code in conjunction with the FMLA.

Section 552.101 also encompasses section 21.355 of the Education Code. We note that section 21.355 is applicable to the submitted teacher and administrator evaluations. Section 21.355 provides that, “[any] document evaluating the performance of a teacher or administrator is confidential.” This office 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). In Open Records Decision No. 643, this office also concluded 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 his or her evaluation. *Id* at 4. Similarly, an administrator is someone who is required to hold and does hold a certificate required under chapter 21 of the Education Code and is administering at the time of his or her evaluation. *See id*. The submitted information demonstrates that the individual who is the subject of the submitted evaluations held both teaching and administrator certificates under subchapter B of chapter 21 of the Education Code and was performing the functions of a teacher or an administrator at the time of the evaluations. Therefore, we conclude that the marked evaluations are confidential under section 21.355 of the Education Code. However, section 21.352(c) of the Education Code specifically provides that “[e]ach teacher is entitled to receive a written copy of the evaluation on its completion.” We note that the Mangum requestor represents the individual whose teacher evaluations are at issue. Therefore, to the extent these teacher evaluations are the type contemplated in section 21.352, the Mangum requestor has a right of access under section 21.352(c) to his client’s teacher evaluations. If this requestor does not have a right of access under section 21.352(c), then the teacher evaluations must be withheld from all of the requestors pursuant to section 552.101 in conjunction with section 21.355 of the Education Code. Additionally, we note that section 21.354 of the Education Code does not contain a similar access provision for administrator evaluations. Therefore, the district must withhold the marked administrator evaluations from all of the requestors under section 552.101 in conjunction with section 21.355 of the Education Code.

Section 552.101 also encompasses the Medical Practice Act (the “MPA”), subtitle B of title 3 of the Occupations Code. Section 159.002 provides in pertinent part:

(b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.

(c) A person who receives information from a confidential communication or record as described by this chapter, other than a person listed in Section 159.004 who is acting on the patient's behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

Occ. Code § 159.002(b), (c). This office has concluded that the protection afforded by section 159.002 extends only to records created by either a physician or someone under the supervision of a physician. *See* Open Records Decision Nos. 487 (1987), 370 (1983), 343 (1982). We have also found that when a file is created as the result of a hospital stay, all the documents in the file relating to diagnosis and treatment constitute physician-patient communications or "[r]ecords of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician." Open Records Decision No. 546 (1990). Further, information that is subject to the MPA also includes information that was obtained from medical records. *See* Occ. Code. § 159.002(a), (b), (c); *see also* Open Records Decision No. 598 (1991).

Medical records must be released upon the governmental body's receipt of the patient's signed, written consent, provided that the consent specifies (1) the information to be covered by the release, (2) reasons or purposes for the release, and (3) the person to whom the information is to be released. *See* Occ. Code §§ 159.004, .005. Section 159.002(c) also requires that any subsequent release of medical records be consistent with the purposes for which the governmental body obtained the records. *See* Open Records Decision No. 565 at 7 (1990). We have marked the medical records that are subject to the MPA. The district may only disclose these records in accordance with the MPA.

You claim section 58.007 of the Family Code, which is also encompassed by section 552.101. Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

- (1) if maintained on paper or microfilm, kept separate from adult files and records;
- (2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and
- (3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapter B.

Fam. Code § 58.007(c). The remaining submitted information consists of documents in a personnel file of the district. These documents do not consist of juvenile law enforcement records for purposes of section 58.007; therefore, no portion of the remaining information

is confidential under section 58.007(c) of the Family Code, and the district may not withhold it under section 552.101 of the Government Code on that ground.

Chapter 411 of the Government Code deems confidential criminal history record information ("CHRI") generated by the National Crime Information Center or by the Texas Crime Information Center. CHRI means "information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions." Gov't Code § 411.082(2). Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety ("DPS") maintains, except that DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See* Gov't Code § 411.083.

A school district may obtain CHRI from the DPS if authorized by section 411.097 and subchapter C, chapter 22 of the Education Code; however, a school district may not release CHRI except as provided by section 411.097(d). *See id.* § 411.097(d); Educ. Code § 22.083(c)(1) (authorizing school district to obtain from any law enforcement or criminal justice agency all CHRI relating to school district employee); *see also* Gov't Code § 411.087. Section 411.087 authorizes a school district to obtain CHRI from the Federal Bureau of Investigation (the "FBI") or any other criminal justice agency in this state. Gov't Code § 411.087. Thus, any CHRI generated by the federal government or another state may not be made available to the requestor except in accordance with federal regulations. *See* ORD 565. Furthermore, any CHRI the district obtained from the DPS or any other criminal justice agency in this state must be withheld under section 552.101 of the Government Code in conjunction with section 411.097(d) of the Government Code. *See* Educ. Code § 22.083(c)(1). Upon review of the submitted information, we find that the information we have marked constitutes CHRI for the purposes of chapter 411. Therefore, the district must withhold the information we have marked under section 552.101 of the Government Code. We note that a person may access his own CHRI from DPS. Gov't Code § 411.083(3).

Section 552.102(a) of the Government Code excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." *Id.* § 552.102(a). In *Hubert v. Harte-Hanks Texas Newspapers*, 652 S.W.2d 546 (Tex. App.—Austin 1983, *writ ref'd n.r.e.*), the court ruled that the test to be applied to information claimed to be protected under section 552.102(a) is the same as the test formulated by the Texas Supreme Court in *Industrial Foundation* for information claimed to be protected under the doctrine of common-law privacy as incorporated by section 552.101 of the Government Code. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 683-85 (Tex. 1976). Accordingly, we will address common-law privacy under section 552.101 and section 552.102(a) together.

Section 552.101 also encompasses common-law privacy. For information to be protected from public disclosure by the common-law right of privacy under section 552.101, the information must meet the criteria set out in *Industrial Foundation*. In *Industrial Foundation*, the Texas Supreme Court stated that information is excepted from disclosure if (1) the information contains highly intimate or embarrassing facts, the release of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. 540 S.W.2d at 685. This office has found some kinds of medical information or information indicating disabilities or specific illnesses are excepted from required public disclosure under common-law privacy. See Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps).

In addition, prior decisions of this office have found that personal financial information relating only to an individual ordinarily satisfies the first requirement of the test for common-law privacy, but that there is a legitimate public interest in the essential facts about a financial transaction between an individual and a governmental body. See Open Records Decision Nos. 600 (1992) (finding personal financial information to include designation of beneficiary of employee's retirement benefits and optional insurance coverage; choice of particular insurance carrier; direct deposit authorization; and forms allowing employee to allocate pretax compensation to group insurance, health care, or dependent care), 545 at 4 (1990) (attorney general has found kinds of financial information not excepted from public disclosure by common-law privacy to generally be those regarding receipt of governmental funds or debts owed to governmental entities), 523 (1989) (individual's mortgage payments, assets, bills, and credit history). For example, a public employee's allocation of his salary to a voluntary investment program or to optional insurance coverage which is offered by his employer is a personal investment decision, and information about it is excepted from disclosure under the common-law right of privacy. See ORD 545. However, information revealing that an employee participates in a group insurance plan funded partly or wholly by the governmental body is not excepted from disclosure. See ORD 600 at 10. We note that this office has found that the public has a legitimate interest in information relating to employees of governmental bodies and their employment qualifications and job performance. See Open Records Decision Nos. 562 at 10 (1990), 542 at 5 (1990); see also Open Records Decision No. 423 at 2 (1984) (scope of public employee privacy is narrow). Upon review of the remaining information, we find that portions of it are highly intimate or embarrassing and not of legitimate public concern. We note, however, the private information at issue pertains to the client of the Mangum requestor. Section 552.023(a) gives a person or a person's authorized representative a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from disclosure by laws intended to protect that person's privacy interests. See Gov't Code § 552.023; Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual or authorized representative asks governmental body to provide information concerning that individual). Accordingly, the Mangum requestor has a right of access to his client's information and it may not be withheld from him under sections 552.101 and 552.102(a) in conjunction with common-law privacy. The district,

however, must withhold the information we have marked under sections 552.101 and 552.102(a) in conjunction with common-law privacy from the remaining two requestors.

Section 552.102(b) excepts from disclosure all information from transcripts of professional public school employees other than the employee's name, the courses taken, and the degree obtained. Gov't Code § 552.102(b); Open Records Decision No. 526 (1989). We note that section 552.102(b) protects privacy interests. Accordingly, the Mangum requestor has a right of access to his client's transcripts under section 552.023. *See id.* § 552.023(a); Open Records Decision No. 481 at 4 (1987). Thus, with the exception of the employee's name, courses taken, and degree obtained, which you must release, we find that the submitted transcripts must be withheld pursuant to section 552.102(b) from the remaining two requestors.

Section 552.117(a)(1) of the Government Code provides that information is excepted from disclosure if it relates to a current or former employee's home address, home telephone number, social security number, or reveals whether the employee has family members. *See* Gov't Code § 552.117(a)(1). The district is required to withhold this information if the employee timely requested that this information be kept confidential under section 552.024 of the Government Code. *See* Open Records Decision Nos. 622 (1994), 455 (1987); *see generally* Open Records Decision No. 530 (1989) (stating that whether particular piece of information is public must be determined at time request for it is made). As noted above, the Mangum requestor has a special right of access to his client's private information. *See* Gov't Code § 552.023(b) (governmental body may not deny access to person to whom information relates or person's agent on grounds that information is considered confidential by privacy principles). Therefore, pursuant to section 552.117(a)(1), the district must withhold the personal information we have marked from the remaining two requestors, if the employee at issue made a timely election under section 552.024 of the Government Code. If this individual did not make a proper election under section 552.024, then his personal information must be released to all of the requestors.

We note that the remaining information contains information that is subject to sections 552.130, 552.136, and 552.137 of the Government Code.¹ Section 552.130 of the Government Code excepts from disclosure information relating to a motor vehicle operator's or driver's license or permit or a motor vehicle title or registration issued by an agency of this state. *See id.* § 552.130 (a)(1)-(2). This exception also protects personal privacy. Accordingly, the Mangum requestor has a right of access under section 552.023 of the Government Code to his client's Texas driver's license information. *See id.* § 552.023(a); Open Records Decision No. 481 at 4 (1987). The district must withhold the marked Texas motor vehicle record information from the remaining two requestors under section 552.130.

¹The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

Section 552.136 of the Government Code states that “[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” Gov’t Code § 552.136. An access device number is one that may be used to “(1) obtain money, goods, services, or another thing of value; or (2) initiate a transfer of funds other than a transfer originated solely by paper instrument.” *Id.* We note, however, that section 552.136 protects privacy interests. Therefore, the Mangum requestor has a right of access to the marked insurance policy number under section 552.023. *See id.* § 552.023. The district must, however, withhold the marked insurance policy number from the remaining two requestors under section 552.136 of the Government Code.

The remaining information also contains an e-mail address that is subject to section 552.137 of the Government Code. 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). We note that the Mangum requestor has a right of access to his client’s e-mail address. *Id.* § 552.137(b) (owner of e-mail address may consent to release of e-mail address). 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 under section 552.137 from the remaining two requestors unless the district receives consent for its release.

In summary, the district must withhold from the two requestors who do not represent the individual who is the subject of the request (1) the submitted I-9, W-2, and W-4 forms under section 552.101 and federal law; (2) the information we have marked under section 552.101 in conjunction with the FMLA; (3) the marked evaluations under section 552.101 in conjunction with section 21.355 of the Education Code; (4) the marked CHRI under section 552.101 in conjunction with chapter 411 of the Government Code; (5) the information we have marked under sections 552.101 and 552.102(a) in conjunction with common-law privacy; (6) with the exception of the employee’s name, courses taken, and degree obtained, the submitted transcripts under section 552.102(b); (7) the personal information under section 552.117(a)(1), if the individual made a timely election; (8) the Texas motor vehicle record information we have marked under section 552.130; (9) the insurance policy number we have marked under section 552.136; and (10) the e-mail address we have marked under section 552.137, unless the district receives consent for its release. The district may only release the marked medical records in accordance with the MPA for all of the requestors. For the Mangum requestor, the district must withhold (1) the submitted I-9 form under section 552.101 in conjunction with federal law; (2) the W-2 and W-4 forms if the requestor’s client did not consent to their release or the Secretary of Treasury determines that disclosure would seriously impair federal tax administration; (3) the information we have marked under section 552.101 in conjunction with the FMLA; (4) the marked teacher evaluations, if they are not the type contemplated in section 21.352, and the administrator evaluations under section 552.101 in conjunction with section 21.355 of the

Education Code; and (5) the marked CHRI under section 552.101 in conjunction with chapter 411 of the Government Code. The remaining information must be released.²

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).

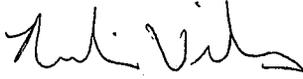
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can challenge that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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.

²We note that the submitted information contains a social security number. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. The requestor has a right, however, to his client's social security number. *See generally* Gov't Code § 552.023(b).

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,



Melanie J. Villars
Assistant Attorney General
Open Records Division

MJV/jh

Ref: ID# 307117

Enc. Submitted documents

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