



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 21, 2008

Ms. Leticia D. McGowan  
School Attorney  
Dallas Independent School District  
3700 Ross Avenue  
Dallas, Texas 75204-5491

OR2008-11546

Dear Ms. McGowan:

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# 319622.

The Dallas Independent School District (the "district") received a request for all applications and legal review committee reports for a specified individual. You state that the district has provided the requestor with the employment application. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.117, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that some of the submitted information, which we have marked, is not responsive to the instant request because it was created after the date of this request. Additionally, we have marked a portion of the submitted information that is not responsive because it does not pertain to the specified individual. The district need not release non-responsive information in response to this request and this ruling will not address that information.

We also note that a portion of the submitted information was the subject of a previous ruling by this office. In Open Records Letter No. 2008-03055 (2008) this office ruled on all of the final investigative reports conducted by the district's Office of Professional Responsibility since 2006. A portion of the submitted information was encompassed by that previous

ruling. As we have no indication that the law, facts, and circumstances on which the prior ruling was based have changed, the district must continue to rely on that ruling as a previous determination and withhold or release the submitted information we previously ruled on in accordance with Open Records Letter No. 2008-03055. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). However, to the extent the information in the current request is not encompassed by that previous decision, we will address your arguments for the remaining 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 protected by other statutes, such as chapter 55 of the Code of Criminal Procedure. Articles 55.01 through 55.05 of the Code of Criminal Procedure provide for the expunction of criminal records in certain limited circumstances. Article 55.03 prescribes the effect of an expunction order and provides:

When the order of expunction is final:

- (1) the release, maintenance, dissemination, or use of the expunged records and files for any purpose is prohibited;
- (2) except as provided in Subdivision (3) of this article, the person arrested may deny the occurrence of the arrest and the existence of the expunction order; and
- (3) the person arrested or any other person, when questioned under oath in a criminal proceeding about an arrest for which the records have been expunged, may state only that the matter in question has been expunged.

Crim. Proc. Code art. 55.03. Article 55.04 imposes sanctions for violations of an expunction order and provides in relevant part:

Sec. 1. A person who acquires knowledge of an arrest while an officer or employee of the state or of any agency or other entity of the state . . . and who knows of an order expunging the records and files relating to that arrest commits an offense if he knowingly releases, disseminates, or otherwise uses the records or files.

*Id.* art. 55.04, § 1. This office has previously determined that the expunction statute prevails over the Act. *See* Open Records Decision No. 457 at 2 (1987) (governmental body

prohibited from releasing or disseminating arrest records subject to expunction order, as “those records are not subject to public disclosure under the [Act]”). Having reviewed the expunction order and the submitted information, we find that some of the submitted information is subject to the court ordered expunction and is thus confidential under article 55.03 of the Code of Criminal Procedure. Accordingly, the information we have marked must be withheld under section 552.101 of the Government Code in conjunction with article 55.03.

Next, we note that some of the remaining information, specifically, criminal history information obtained from the Safe Schools Project, may be subject to the Fair Credit Reporting Act (the “FCRA”), 15 U.S.C. § 1681 *et seq.* Section 22.083 of the Education Code permits the district to obtain criminal history record information from a private entity that is a consumer reporting agency governed by the FCRA. *See* Educ. Code § 22.083(a-1)(3). We understand that the Safe Schools Project is a consumer reporting agency that furnishes reports to the district to be used for employment purposes. *See* 15 U.S.C. § 1681a(f) (defining “consumer reporting agency”), (h) (defining “employment purposes”). A criminal history report compiled by a private consumer reporting agency is a “consumer report” under the FCRA. *See* 15 U.S.C. § 1681a(d) (defining “consumer report”); *see also* [www.ftc.gov/bcp/online/pubs/buspubs/credempl.shtm](http://www.ftc.gov/bcp/online/pubs/buspubs/credempl.shtm) (discussing Federal Trade Commission position that “consumer report” includes criminal histories). Section 1681b of the FCRA permits a consumer reporting agency to furnish a consumer report to a person that the consumer reporting agency has reason to believe intends to use the information for employment purposes. *See* 15 U.S.C. § 1681b(a)(3)(B); *see also id.* § 1681a(b), (d) (defining “person” and “consumer report”). Section 1681b further provides that “[a] person shall not use or obtain a consumer report for any purpose unless . . . the consumer report is obtained for a purpose for which the consumer report is authorized to be furnished under this section; and . . . the purpose is certified in accordance with section 1681e of this title by a prospective user of the report through a general or specific certification.” *Id.* § 1681b(f). Section 1681e provides for the maintenance of procedures by consumer reporting agencies under which prospective users of consumer reports must identify themselves, certify the purposes for which they seek information, and certify that the information will be used for no other purpose. *See* 15 U.S.C. § 1681e(a); *see also* Open Records Decision No. 373 at 2 (1983) (stating that federal law strictly limits distribution of consumer credit reports by credit reporting agencies). Upon review, we find that the Safe Schools Project report is a consumer report for purposes of section 1681b of the FCRA. The FCRA does not permit the disclosure of information in a consumer report for the purpose of responding to a request for information under the Act. Therefore, we conclude that the information in or obtained from this report, which we have marked, must be withheld from the requestor under section 552.101 of the Government Code in conjunction with the FCRA.<sup>1</sup>

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<sup>1</sup>As our ruling is dispositive under section 552.101, we need not address your remaining argument against the disclosure of the information obtained from the Safe School Project report.

We next address your contention that a portion of the submitted information consists of teacher evaluations that are confidential under section 21.355 of the Education Code. Section 552.101 also encompasses section 21.355, which provides that, “[any] document evaluating the performance of a teacher or administrator is confidential.” Educ. Code § 21.355. 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. *See* Open Records Decision No. 643 (1996). In Open Records Decision No. 643, we determined that a “teacher” for purposes of section 21.355 means a person who (1) is required to, and does in fact, hold a teaching certificate under subchapter B of chapter 21 of the Education Code or a school district teaching permit under section 21.055 and (2) is engaged in the process of teaching, as that term is commonly defined, at the time of the evaluation. *See id.* at 4. You indicate that the teacher at issue did hold the appropriate certificate and was a teacher at the time of the evaluations. You do not indicate which documents in the submitted information you believe are evaluative. Upon review, we agree that a portion of the information, which we have marked, consists of evaluations of the teacher at issue. Therefore, the information we marked is confidential under section 21.355 and must be withheld under section 552.101 of the Government Code.

We next address your argument that a portion of the submitted information is excepted under section 552.117 of the Government Code. Section 552.117(a)(1) of the Government Code excepts from disclosure the home address and telephone number, social security number, and family member information of a current or former official or employee of a governmental body who requests that this information be kept confidential under section 552.024 of the Government Code. Gov’t Code § 552.117(a)(1). Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body’s receipt of the request for the information. *See* Open Records Decision No. 530 at 5 (1989). Thus, information may only be withheld under section 552.117(a)(1) on behalf of a current or former official or employee who made a request for confidentiality under section 552.024 prior to the date of the governmental body’s receipt of the request for the information. Information may not be withheld under section 552.117(a)(1) on behalf of a current or former official or employee who did not timely request under section 552.024 that the information be kept confidential. You have not informed us that the employee whose information is at issue requested confidentiality pursuant to section 552.024. Accordingly, if the employee timely elected confidentiality, the district must withhold the information that we marked under section 552.117(a)(1). If the employee did not timely elect, this information may not be withheld under section 552.117(a)(1).

You also claim that the submitted information contains Texas driver’s license or personal identification information excepted from disclosure under section 552.130 of the Government Code. Section 552.130 excepts from disclosure information relating to a Texas motor vehicle driver’s license or personal identification. Gov’t Code § 552.130. Upon review, however, we find that the submitted information does not contain any Texas driver’s

license or personal identification information. Therefore, none of the submitted information may be withheld under section 552.130.

Finally, we note that some of the e-mail addresses in the remaining information are subject to section 552.137 of the Government Code.<sup>2</sup> Section 552.137 states that "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 [the Act]," unless the owner of the e-mail address has affirmatively consented to its public disclosure. Gov't Code § 552.137(a)-(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). We have marked the e-mail addresses that the district must withhold under section 552.137 of the Government Code, unless the owners of the e-mail addresses affirmatively consented to their disclosure.

In summary, the district must continue to rely on Open Records Letter No. 2008-03055 as a previous determination and withhold or release the submitted information we previously ruled on in accordance with that ruling. To the extent the information in the current request is not encompassed by that previous decision, the district must withhold the information we have marked under section 552.101 in conjunction with article 55.03 of the Code of Criminal Procedure, the FCRA, and section 21.355 of the Education Code. If the employee whose information is at issue timely elected confidentiality under section 552.024 of the Government Code, the district must withhold the information that we marked under section 552.117(a)(1) of the Government Code. If the employee did not timely elect, the information we marked under section 552.117(a)(1) must be released. The district must withhold the e-mail addresses we have marked under section 552.137 of the Government Code, unless the owners affirmatively consented to their disclosure. The remaining information must be released to the requestor.<sup>3</sup>

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

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<sup>2</sup>The Office of the Attorney General will raise a mandatory exception like section 552.137 on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

<sup>3</sup>We note that section 552.147 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. Gov't Code § 552.147.

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). If the governmental body does not file suit over 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,



Laura E. Ream  
Assistant Attorney General  
Open Records Division

LER/jb

Ref: ID# 319622

Enc. Submitted documents

c: Ms. Tawnell D. Hobbs, Reporter  
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(w/o enclosures)