



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 15, 2008

Ms. Kelli Karczewski
Feldman & Rogers, L.L.P.
222 North Mound, Suite 2
Nacogdoches, Texas 75961

OR2008-14132

Dear Ms. Karczewski:

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# 324629.

The Nacogdoches County Schools' Cooperative (the "co-op"), which you represent, received a request for a specified co-op employee's personnel file.¹ You indicate that you will release most of the requested information to the requestor. You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.102 of the Government Code.² We have considered the exceptions you claim and reviewed the submitted information.

We first note that Exhibit G contains medical records. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. This section encompasses information protected by other statutes such as the Medical Practice Act (the "MPA"), subtitle B of title 3 of the Occupations Code. Section 159.002 provides in pertinent part:

¹You state that the co-op sought, but did not receive, clarification from the requestor. *See* Gov't Code § 552.222(b) (stating that if information requested is unclear, governmental body may ask requestor to clarify or narrow request). We note that a governmental body has a duty to make a good faith effort to relate a request for information to information that the governmental body holds. Open Records Decision No. 561 (1990). As you have submitted responsive information for our review and raised exceptions to disclosure for these documents, we consider the co-op to have made a good faith effort to identify information that is responsive to the request, and we will address the applicability of the claimed exceptions to the submitted information.

²Although you initially raise section 552.107 of the Government Code and Texas Rule of Evidence 503, you have provided no arguments regarding the applicability of these provisions. Thus, we assume that you no longer urge section 552.107 and rule 503. *See* Gov't Code §§ 552.301(b), (e), .302.

(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 determined that in governing access to a specific subset of information, the MPA prevails over the more general provisions of the Act. *See* Open Records Decision No. 598 (1991). This office has also 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). 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). The medical record submitted as Exhibit G may only be released in accordance with the MPA.³

We next address your argument against the disclosure of the documents in Exhibits E and F. Section 552.101 also encompasses section 21.355 of the Education Code, which 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, we determined that for purposes of section 21.355, the word "teacher" means a person who 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 who is engaged in the process of teaching, as that term is commonly defined, at the time of the evaluation. *See id.* at 4. This office also concluded that an administrator is someone who is required to hold, and does hold, an administrator's certificate required under chapter 21 of the Education Code, and is administering at the time of his or her evaluation. ORD 643.

You state that the individual named in the request is the subject of the information submitted at Exhibits E and F held a teacher's certificate under subchapter B of chapter 21 of the

³As our ruling is dispositive for this information, we need not address your argument against disclosure of this information.

Education Code. You also state, however, that this individual was performing the functions of an administrator at the time of the evaluations. You also acknowledge that this individual did not hold an administrator's certificate under chapter 21 of the Education Code at the time of her evaluation. As discussed above, for section 21.355 to be applicable to the evaluations of a person performing the functions of an administrator, that individual must hold an administrator's certificate. *Id.* Therefore, based on your representations, we conclude that section 21.355 is not applicable to Exhibits E and F. Accordingly, the co-op may not withhold Exhibits E and F under this section. As you raise no other exception to the disclosure of Exhibits E and F, this information must be released to the requestor.

Next, you claim that portions of the named employee's transcript in Exhibit H are excepted under section 552.102(b). 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). Thus, with the exception of the employee's name, courses taken, and degree obtained, the co-op must withhold the information in the submitted transcript pursuant to section 552.102(b) of the Government Code.

In summary, the medical record in Exhibit G may only be released in accordance with the MPA. With the exception of the employee's name, courses taken, and degree obtained, the co-op must withhold the information in the transcript in Exhibit H pursuant to section 552.102(b) of the Government Code. 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). 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# 324629

Enc. Submitted documents

c: Ms. Tyesha Boudreaux
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