



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 10, 2008

Ms. Tanya Rachal Dawson
Fort Worth Independent School District
100 North University Drive, Suite SW 172
Fort Worth, Texas 76107

OR2008-15435

Dear Ms. Dawson:

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# 327361.

The Fort Worth Independent School District (the "district") received a request for the complete personnel file of a named individual and any and all documentation submitted in termination or non-renewal of that individual's employment contract. You state that you have released some information to the requestor. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.117, and 552.135 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

The United States Department of Education Family Policy Compliance Office (the "DOE") has informed this office that FERPA does not permit state and local educational authorities to disclose to this office, without parental consent, unredacted, personally identifiable information contained in education records for the purposes of our review in the open records ruling process under the Act.¹ Consequently, state and local educational authorities that receive a request for education records from a member of the public under the Act must not submit education records to this office in unredacted form, that is, in a form in which "personally identifiable information" is disclosed. See 34 C.F.R. § 99.3 (defining

¹A copy of this letter may be found on the attorney general's website, available at <http://www.oag.state.tx.us/open/20060725usdoe.pdf>.

“personally identifiable information”). You have submitted student handwritten statements and other information that identifies students to this office. *See* Open Records Decision No. 224 (1979) (student’s handwritten comments protected under FERPA because they would make identity of student easily traceable through handwriting, style of expression, or particular incidents related in the comments). Because our office is prohibited from reviewing education records, we will not address the applicability of FERPA to the information at issue. Such determinations under FERPA must be made by the educational authority in possession of the education record. We will, however, address the applicability of your claimed exceptions to the remaining 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 information protected by other statutes and federal law. The submitted information includes an I-9 form, which is 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 this document under the Act would be “for purposes other than for enforcement” of the referenced federal statute. Accordingly, we conclude that the submitted I-9 form, which you have marked, is 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 this section renders tax return information confidential. *See* Attorney General Opinion H-1274 (1978) (tax returns); Open Records Decision Nos. 600 (1992) (W-4 forms), 226 (1979) (W -2 forms). Tax return information is defined as data furnished to or collected by the Internal Revenue Service with respect to the determination of possible existence of liability of any person under title 26 of the United States Code for any tax. *See* 26 U.S.C. § 6103(b). Thus, the submitted W-4 form, which you have marked, constitutes tax return information that must be withheld under section 552.101 of the Government Code in conjunction with federal law.

Section 552.101 also encompasses section 21.355 of the Education Code. Section 21.355 provides that “[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). In that opinion, we 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.* You contend that the documents you have marked contain information which "relate[s] to the evaluation and/or performance of a teacher" and should therefore be withheld from disclosure under section 21.355. You state that the teacher was required to and did hold a teaching certificate and was teaching at the time of the evaluations.

Portions of the information at issue consist of performance evaluations of a former district teacher. Having considered your arguments and reviewed the information at issue, we agree that the information we have marked evaluates the performance of the teacher at issue for purposes of section 21.355 of the Education Code and must be withheld pursuant to section 552.101 of the Government Code. However, you have failed to show how the remaining information evaluates the performance of the teacher at issue for purposes of section 21.355. Accordingly, the district may not withhold any of the remaining information under section 552.101 of the Government Code on this basis.

Section 552.101 also encompasses section 21.048 of the Education Code, which addresses teacher certification examinations. Section 21.048(c-1) provides the following:

The results of an examination administered under this section are confidential and are not subject to disclosure under Chapter 552, Government Code, unless:

- (1) the disclosure is regarding notification to a parent of the assignment of an uncertified teacher to a classroom as required by Section 21.057; or
- (2) the educator has failed the examination more than five times.

Educ. Code § 21.048(c-1). We note a portion of the information you have marked for release contains results from an examination administered under section 21.048 of the Education Code. You do not inform us that subsection 21.048(c-1)(1) or (2) is applicable; therefore, the district must withhold the information that we have marked under section 552.101 in conjunction with section 21.048 of the Education Code.

Section 552.102(b) of the Government Code excepts from disclosure "a transcript from an institution of higher education maintained in the personnel file of a professional public school employee." Gov't Code § 552.102(b). This section further provides, however, that "the degree obtained or the curriculum on a transcript in the personnel file of the employee" are not excepted from disclosure. Thus, except for the information that reveals the degree obtained and the courses taken, the district must withhold the transcripts in the submitted information under section 552.102(b) of the Government Code.

Section 552.117(a)(1) of the Government Code exempts from disclosure the current and former 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 of the Government Code. We note that section 552.117 also encompasses a personal cellular telephone number, unless the service is paid for by a governmental body. *See* Open Records Decision Nos. 670 at 6 (2001), 506 at 5-7 (1988) (statutory predecessor to section 552.117 not applicable to cell phone numbers provided and paid for by governmental body and intended for official use). Whether information is protected by section 552.117(a)(1) must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Pursuant to section 552.117(a)(1), the district must withhold this personal information that pertains to a current or former employee of the district who elected, prior to the district's receipt of the request for information, to keep such information confidential. Such information may not be withheld for an individual who did not make a timely election. You inform us, and the submitted information reflects, that the individual at issue timely elected confidentiality under section 552.024; therefore, we agree that the district must withhold the personal information we have marked under section 552.117(a)(1).

Section 552.135 of the Government Code provides in relevant part:

(a) "Informer" means a student or former student or an employee or former employee of a school district who has furnished a report of another person's or persons' possible violation of criminal, civil, or regulatory law to the school district or the proper regulatory enforcement authority.

(b) An informer's name or information that would substantially reveal the identity of an informer is excepted from [required public disclosure].

Gov't Code § 552.135(a), (b). Because the legislature limited the protection of section 552.135 to the identity of a person who reports a possible violation of "law," a school district that seeks to withhold information under that exception must clearly identify to this office the specific civil, criminal, or regulatory law that is alleged to have been violated. *See id.* § 552.301(e)(1)(A). Additionally, we note that individuals who provide information in the course of an investigation, but do not make the initial report are not informants for the purposes of section 552.135 of the Government Code. Upon review, we find that you have failed to demonstrate that any portion of the remaining submitted information identifies an informer for purposes of section 552.135. Thus, the district may not withhold any portion of the remaining submitted information under this exception.

In summary, the district must withhold the submitted I-9 form under section 552.101 of the Government Code in conjunction with section 1324a of title 8 of the United States Code and the submitted W-4 form under section 552.101 of the Government Code in conjunction with section 6103(a) of title 26 of the United States Code. The district must withhold the

information we have marked under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code and the information we have marked under section 552.101 in conjunction with section 21.048 of the Education Code. With the exception of the information that reveals the degree obtained and the courses taken, the district must withhold the transcripts in the submitted information under section 552.102(b) of the Government Code. The district must withhold the personal information we have marked under section 552.117(a)(1). The remaining information must be released. This ruling does not address the applicability of FERPA to the submitted information. Should the district determine that all or portions of the submitted information consists of "education records" subject to FERPA, the district must dispose of that information in accordance with FERPA, rather than the Act.

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).

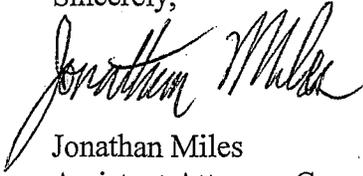
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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,



Jonathan Miles
Assistant Attorney General
Open Records Division

JM/ma

Ref: ID# 327361

Enc. Submitted documents

c: Ms. Pamela Carroll
Director of Human Resources- Lancaster ISD
422 South Centre Avenue
Lancaster, Texas 75146
(w/o enclosures)