



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 2, 2009

Mr. Humberto F. Aguilera  
Escamilla & Poneck, Inc.  
P.O. Box 200  
San Antonio, Texas 78291-0200

OR2009-07498

Dear Mr. Aguilera:

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# 345024.

The San Antonio School District (the "district"), which you represent, received a request for the personnel file and all internal investigation records regarding a named former employee. You state the district will redact social security numbers per an agreement with the requestor and pursuant to section 552.147 of the Government Code.<sup>1</sup> You claim the submitted personnel documents are excepted from disclosure under sections 552.101, 552.102, and 552.117 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note, in addition to social security numbers, the requestor has agreed to the redaction of college transcript grades and family member information of the named former employee. As such, those types of information are not responsive and will not be addressed by this ruling.

Next, we note that recently the United States Department of Education Family Policy Compliance Office informed this office the Family Educational Rights and Privacy Act

---

<sup>1</sup>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.

("FERPA"), 20 U.S.C. § 1232g, does not permit state and local educational authorities to disclose to this office, without parental or an adult student's consent, unredacted, personally identifiable information contained in education records for the purpose of our review in the open records ruling process under the Act.<sup>2</sup> 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 "personally identifiable information"). You have submitted, among other things, unredacted education records for our review. Because our office is prohibited from reviewing education records, we will not address the applicability of FERPA to the information at issue. *See* 20 U.S.C. § 1232g(a)(1)(A); 34 C.F.R. § 99.3. Such determinations under FERPA must be made by the educational authority in possession of the education record.

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 section 21.355 of the Education Code, which provides that "[a] 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 or an administrator. *See* Open Records Decision No. 643 (1996). In Open Records Decision No. 643, we determined for purposes of section 21.355, the word "administrator" means a person who is required to, and does in fact, hold an administrator's certificate under subchapter B of chapter 21 of the Education Code, and is performing the functions of an administrator, as that term is commonly defined, at the time of the evaluation. *See* ORD 643 at 4. Additionally, the Third Court of Appeals has held a written reprimand constitutes an evaluation for purposes of section 21.355. *See Abbott v. North East Indep. Sch. Dist.*, 212 S.W.3d 364 (Tex. App.—Austin, 2006).

You assert the submitted personnel records, in whole or in part, are confidential under section 21.355. The records include, among other things, a letter of reprimand and administrator assessment forms that were completed during application processes by the named former employee's references regarding his potential as a prospective administrator. Upon review, we agree the letter of reprimand and administrator assessment forms, which we have marked, are evaluations for purposes of section 21.355. You have provided documentation showing the former employee whose evaluations are at issue held an administrator's certificate under subchapter B of chapter 21 of the Education Code at the times of the evaluations. You indicate the former employee was engaged in the process of administrating at the times of the evaluations. Thus, the marked letter of reprimand and administrator assessment forms are confidential under section 21.355 of the Education Code, and must be withheld under section 552.101 of the Government Code. You have failed to

---

<sup>2</sup>A copy of this letter may be found on the attorney general's website, available at <http://www.oag.state.tx.us/open/20060725usdoe.pdf>.

demonstrate, however, how any of the remaining personnel records, including employment applications, e-mails, interview notes and screening documents, and photographs constitute evaluations for purposes of section 21.355. Therefore, none of the remaining information may be withheld under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code.

You claim the named former employee's college transcripts are excepted under section 552.102(b) of the Government Code. This section excepts from disclosure all information in 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 former employee's name, courses taken, and degree obtained, the district must withhold the submitted college transcripts pursuant to section 552.102(b) of the Government Code.

Section 552.117(a)(1) of the Government Code excepts 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 this information be kept confidential under section 552.024 of the Government Code. Gov't Code § 552.117(a)(1). Additionally, section 552.117 encompasses personal cellular telephone and pager numbers, provided the cellular telephone or pager service is paid for by the employee with his or her own funds. *See* Open Records Decision No. 670 at 6 (2001) (extending section 552.117(a)(1) exception to personal cellular telephone number and personal pager number of employee who elects to withhold home telephone number in accordance with section 552.024). 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). The district may only withhold information under section 552.117(a)(1) on behalf of current or former officials or 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 not informed us whether or not the named former employee whose information is at issue chose to withhold his personal information prior to the district's receipt of the request for information. Therefore, if the former employee timely elected to withhold his home addresses, home telephone numbers, personal cellular telephone numbers, and personal pager numbers, the district must withhold this information, which we have marked, pursuant to section 552.117(a)(1) of the Government Code. If the former employee did not timely elect to withhold his personal information, then the district may not withhold any of the marked personal information under section 552.117(a)(1) of the Government Code.

We note the remaining information contains a bank account number. Section 552.136 of the Government Code provides:

(a) In this section, "access device" means a card, plate, code, account number, personal identification number, electronic serial number, mobile

identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device 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.

(b) Notwithstanding 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.<sup>3</sup> We conclude the bank account number we have marked constitutes an access device number for purposes of section 552.136. Thus, the district must withhold the marked bank account number under section 552.136 of the Government Code.

We note the remaining information includes an e-mail address subject to section 552.137 of the Government Code, which 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). The e-mail address in the remaining information is not specifically excluded by section 552.137(c). As such, this e-mail address, which we have marked, must be withheld under section 552.137, unless the owner of the address has affirmatively consented to its release. *See id.* § 552.137(b).

In summary, the marked letter of reprimand and administrator assessment forms must be withheld under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code. With the exception of the former employee's name, courses taken, and degree obtained, the district must withhold the submitted college transcripts pursuant to section 552.102(b) of the Government Code. If the former employee timely elected to withhold his personal information, the district must withhold the marked home addresses, home telephone numbers, personal cellular telephone numbers, and personal pager numbers pursuant to section 552.117(a)(1) of the Government Code. The district must withhold the marked bank account number under section 552.136 of the Government Code, and the marked e-mail address under section 552.137 of the Government Code, unless the owner of the address has affirmatively consented to its release. The remaining information must be released.

---

<sup>3</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Leah B. Wingerson  
Assistant Attorney General  
Open Records Division

LBW/dls

Ref: ID# 345024

Enc. Submitted documents

c: Requestor  
(w/o enclosures)