



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 14, 2009

Ms. Laura C. Rodriguez
Walsh Anderson, Brown, Aldridge & Gallegos P.C.
Attorney for Lytle Independent School District
P.O. Box 460606
San Antonio, Texas 78246

OR2009-09707

Dear Ms. Rodriguez:

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# 349048.

The Lytle Independent School District (the "district"), which you represent, received a request for eleven categories of information related to complaints against a specified teacher. You state that you have redacted some student-identifying information pursuant to the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code.¹ You claim that the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.117 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.108(a)(1) of the Government Code excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor 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." Gov't Code § 552.108(a)(1). Although the district

¹The United States Department of Education Family Policy Compliance Office (the "DOE") has informed this office FERPA does not permit state and local educational authorities to disclose to this office, without parental or student consent, unredacted, personally identifiable information contained in education records for the purpose of our review in the open records ruling process under the Act. The DOE has determined FERPA determinations must be made by the educational authority in possession of the education records. We have posted a copy of the letter from the DOE to this office on the Attorney General's website: <http://www.oag.state.tx.us/open/20060725usdoe.pdf>.

is not a law enforcement agency or prosecutor, you state that the submitted information relates to a pending prosecution by the 81st Judicial District Attorney's Office (the "district attorney"), and that the district attorney "does not want release of the responsive documents to the general public as it would interfere with the pending prosecution." Where a non-law-enforcement entity has evidentiary information in its custody, the custodian of such information may raise section 552.108 on behalf of a law enforcement entity if the custodian demonstrates that the information relates to a pending case, and provides a representation from the law enforcement entity that it wishes to withhold the information.² However, as of the date of this ruling, we have not received a written representation from the district attorney stating that it seeks to withhold the submitted information under section 552.108. Thus, we conclude that the district may not withhold any of the submitted information based on the district attorney's section 552.108 interests.

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. Section 552.101 encompasses information protected by other statutes, including 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 administrator. *See* Open Records Decision No. 643 (1996). For the purposes of section 21.355, a teacher is someone who is required to and does in fact hold a teaching certificate or permit required under chapter 21 of the Education Code and who is engaged in the process of teaching at the time of the evaluation. *See id.* at 4.

The submitted information contains a letter of reprimand from a district principal to a certified educator. 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.). After review of the submitted information, we conclude the submitted letter of reprimand is confidential under section 21.355. Therefore, pursuant to section 552.101 of the Government Code, the district must withhold this document.

The remaining information at issue contains the home address and telephone number of a former district employee. 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 the information be kept confidential under section 552.024 of the Government Code. 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, a governmental body

²*See generally* Open Records Decision Nos. 474 (1987), 372 (1983).

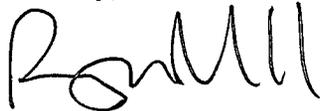
may withhold information under section 552.117(a)(1) only on behalf of a current or former official or employee who made a request for confidentiality under section 552.024 prior to the date of the governmental body's receipt of the request for the information. You inform us that the former employee whose information is at issue made a timely election under section 552.024 to keep her home address and telephone number confidential. Therefore, the district must withhold the address and telephone number you have marked pursuant to section 552.117(a)(1) of the Government Code.

In summary, the district must withhold the information we have marked under (1) section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code, and (2) section 552.117(a)(1) of the Government Code. The district must release the remainder of the submitted information.

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, 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,



Ryan T. Mitchell
Assistant Attorney General
Open Records Division

RTM/rl

Ref: ID# 349048

Enc. Submitted documents

cc: Requestor
(w/o enclosures)