



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 21, 2009

Ms. Ylise Janssen
Senior School Law Attorney
Austin Independent School District
Office of the General Counsel
1111 West Sixth Street A240
Austin, Texas 78703-5399

OR2009-11812

Dear Ms. Janssen:

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# 353322.

The Austin Independent School District (the "district") received a request for the following information regarding a specified employee: (1) application showing education and prior work history, (2) documents showing that the employee received training from the district at the Professional Development Academy, (3) evaluations, and (4) record of absences. You state that the district has provided a majority of the documents to the requestor. You state that the district has redacted social security numbers pursuant to section 552.147 of the Government Code.¹ You claim that the remaining information is excepted from disclosure under sections 552.101 and 552.102 of the Government Code. We have considered the exceptions you claim and reviewed the 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. This section encompasses information protected by other statutes.

¹We note 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. Gov't Code § 552.147(b).

Section 21.355 of the Education Code provides that “[a] document evaluating the performance of a teacher or administrator is confidential.” Educ. Code § 21.355. 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 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 state that the document in Exhibit B is an evaluation of a teacher who held the appropriate teaching certificate and was engaged in the process of teaching at the time of the evaluation. However, upon review of the submitted information in Exhibits B and C, we note that the employee in question is not a teacher, but is instead a “Teacher Assistant” and certified “Educational Aide 1.” Section 21.355 does not apply to evaluations of educational aides. *See* Open Records Decision No. 643 at 5 (concluding that teacher interns, trainees, and educational aides are not “teachers” for the purposes of section 21.355). Thus, the district may not withhold the document in Exhibit B under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code.

Next, you claim the submitted transcripts in Exhibit D are excepted under section 552.102(b) of the Government Code. This section excepts from disclosure all information in a transcript of a professional public school employee other than the employee’s name, courses taken, and degree obtained. Gov’t Code § 552.102(b); Open Records Decision No. 526 (1989). The district asks whether it must release information from the transcripts when the degree obtained and the curriculum of study have already been disclosed to the requestor in the employee’s application. The Act “does not permit a governmental body to provide a requestor with a new document on which only the disclosable requested information has been consolidated and retyped.” Open Records Decision No. 606 at 3 (1992). Instead, a governmental body must “release a copy of an actual requested record, with any confidential or nondisclosable information excised.” *Id.*; *see also* Gov’t Code § 552.228 (governmental body must provide “suitable copy” of public information); Open Records Decision No. 633 (1995) (agency does not comply with Act by releasing to requestor another record as substitute for specifically requested record unless requestor agrees to substitution). The district does not inform us the requestor has agreed to such a substitution. Thus, release of the teacher’s application is not sufficient to comply with the Act. The district must withhold the submitted transcripts in Exhibit D, with the exception of the employee’s name, courses taken, and degree obtained, pursuant to section 552.102(b) of the Government Code.

In summary, the district must withhold the submitted transcripts in Exhibit D, except for the employee’s name, courses taken, and degree obtained, under section 552.102(b) of the Government Code. The remaining information must be released.

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,



Jessica Eales
Assistant Attorney General
Open Records Division

JCE/jb

Ref: ID# 353322

Enc. Submitted documents

c: Requestor
(w/o enclosures)