



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 21, 2009

Mr. Andrew D. Clark  
Powell & Leon, L.L.P.  
1706 West Sixth Street  
Austin, Texas 78703

OR2009-11827

Dear Mr. Clark:

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# 352935.

The Sam Rayburn Independent School District (the "district"), which you represent, received a request for the employment records of five named district employees. You state you will release some of the responsive information. You state you have redacted social security numbers pursuant to section 552.147 of the Government Code. *See* Gov't Code § 552.147(b) (governmental body may redact social security number without necessity of requesting decision from this office under the Act). You claim portions of the submitted information are excepted from disclosure under sections 552.101, 552.102, 552.130, and 552.136 of the Government Code.<sup>1</sup> 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, 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

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<sup>1</sup>Although you failed to timely raise section 552.136 of the Government Code, this provision constitutes a compelling reason to withhold information, and we will address your argument under this exception. *See* Gov't Code §§ 552.301, .302.

has interpreted this section 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). In that opinion, 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. *Id.*

You contend the documents in Exhibit A constitute evaluative information regarding administrators and should therefore be withheld from disclosure under section 21.355. Upon review, we conclude the documents in Exhibit A constitute evaluations subject to section 21.355 of the Education Code. Thus, if the employees at issue held administrator's certificates and were performing the functions of an administrator at the time of the evaluations, the performance evaluations in Exhibit A are confidential under section 21.355 of the Education Code, and must be withheld under section 552.101 of the Government Code. To the extent the employees did not hold the requisite certificates, or were not performing the functions of an administrator, the submitted performance evaluations are not confidential under section 21.355, and may not be withheld under section 552.101 of the Government Code on that basis.

Section 552.101 also encompasses the Medical Practice Act (the "MPA"), subtitle B of title 3 of the Occupations Code. See Occ. Code § 151.001. The MPA governs the public availability of medical records. Section 159.002 of the MPA provides, in part:

(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.

*Id.* § 159.002(b)-(c). Information that is subject to the MPA includes both medical records and information obtained from those medical records. See *id.* §§ 159.002, .004; Open Records Decision No. 598 (1991). This office has concluded 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). Upon review, we find the information in Exhibit C constitutes a medical record subject to the MPA. See ORD 598. The district may only release this information in accordance with the MPA.

Section 552.101 also encompasses the doctrine of common-law privacy, which protects information if it (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both elements of the test must be established. *Id.* at 681-82. This office has found personal financial information not relating to a financial transaction between an individual and a governmental body is excepted from required public disclosure under common-law privacy. *See Open Records Decision Nos. 600 (1992) (employee's designation of retirement beneficiary, choice of insurance carrier, election of optional coverages, direct deposit authorization, forms allowing employee to allocate pre-tax compensation to group insurance, health care or dependent care), 545 (1990) (deferred compensation information, participation in voluntary investment program, election of optional insurance coverage, mortgage payments, assets, bills, and credit history).* Upon review, we find a portion of the submitted information is highly intimate or embarrassing and of no legitimate public interest. Therefore, the district must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.102 of the Government Code excepts from disclosure all information in transcripts of a professional public school employee 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 district must withhold the submitted transcripts in Exhibit B pursuant to section 552.102(b) of the Government Code.

We note portions of the remaining submitted information may be subject to section 552.117 of the Government Code.<sup>2</sup> Section 552.117(a)(1) 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. *See Gov't Code § 552.117(a)(1)*. 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 the social security number, home address, home telephone number, and family member information of a current or former district employee who elected, prior to the district's receipt of the request for information, to keep such information confidential. We have marked the information that is subject to section 552.117(a)(1). If the employees at issue timely elected to withhold their personal information, the district must withhold the information we have marked pursuant to section 552.117(a)(1) of the Government Code. If the employees at issue

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<sup>2</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. *See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987)*.

did not timely elect to withhold their personal information, the district may not withhold the information we have marked under section 552.117(a)(1) of the Government Code.

Section 552.130 excepts from disclosure "information [that] relates to: (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; (2) a motor vehicle title or registration issued by an agency of this state; or (3) a personal identification document issued by an agency of this state or a local agency authorized to issue an identification document." Gov't Code § 552.130(a). We note section 552.130 does not make information regarding the state of issuance confidential because in order for section 552.130 to be applicable, the motor vehicle information must be issued by an agency of the State of Texas. Accordingly, the district must withhold the information we have marked under section 552.130 of the Government Code.

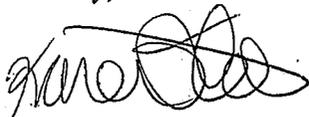
Section 552.136 provides that "[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." *Id.* § 552.136. An access device number is one that may be 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, and includes an account number. *Id.* § 552.136(a). Thus, the district must withhold the bank account information we have marked under section 552.136 of the Government Code. You have failed to demonstrate how the remaining information you have marked is an access device number for purposes of section 552.136. Thus, the remaining information you have marked may not be withheld under section 552.136 of the Government Code.

In summary, to the extent the employees at issue held administrator's certificates and were performing the functions of an administrator at the time of the evaluations, the performance evaluations in Exhibit A must be withheld under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code. The district may only release the medical record in Exhibit C in accordance with the MPA. The district must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. With the exception of the employee's name, the courses taken, and the degree obtained, the district must withhold the transcripts in Exhibit B pursuant to section 552.102(b) of the Government Code. In addition, if the employees at issue timely elected to withhold their personal information, the district must withhold the information we have marked pursuant to section 552.117(a)(1) of the Government Code. The district must withhold the Texas driver's license information we have marked under section 552.130 of the Government Code. The district must withhold the bank account information we have marked under section 552.136 of the Government Code. The remaining submitted 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](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,



Karen E. Stack  
Assistant Attorney General  
Open Records Division

KES/jb

Ref: ID# 352935

Enc. Submitted documents

c: Requestor  
(w/o enclosures)