



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 8, 2009

Ms. Haley Turner  
Attorney for Willis Independent School District  
Walsh, Anderson, Brown, Aldridge & Gallegos, P.C.  
P.O. Box 2156  
Austin, Texas 78768

OR2009-17341

Dear Ms. Turner:

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#363526.

The Willis Independent School District (the "district"), which you represent, received a request for the complete personnel files of seven named individuals. We note that you have redacted social security numbers pursuant to section 552.147 of the Government Code.<sup>1</sup> You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.102 of the Government Code.<sup>2</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, such as

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<sup>1</sup>We note that 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.

<sup>2</sup>We note that you have redacted employee home addresses, home telephone numbers, social security numbers, and family information pursuant to section 552.117 of the Government Code. *See* Gov't Code §552.024 (governmental body may redact section 552.117 information without necessity of requesting decision from this office).

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. 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 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 that a “teacher” for purposes of section 21.355 means a person who 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 who is engaged in the process of teaching, as that term is commonly defined, at the time of the evaluation. See ORD 643 at 4.

You assert the submitted letter of reprimand and teacher performance evaluations in Exhibits 4 and 5 are confidential under section 21.355. Upon review, we agree the documents at issue are evaluations for purposes of section 21.355. You have provided documentation showing the teachers whose evaluations are at issue held a teaching certificate under subchapter B of chapter 21 of the Education Code at the times of the evaluations. Thus, the submitted letter of reprimand and teacher performance evaluations in Exhibits 4 and 5 are confidential under section 21.355 of the Education Code, and must be withheld under section 552.101 of the Government Code.

Section 552.101 also encompasses the Medical Practice Act (“MPA”). See Occ. Code §§151.001-165.160. Section 159.002 of the MPA provides in pertinent 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). This office has concluded that 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 conclude that Exhibit 6 consists of medical records that are subject to the MPA. Thus, Exhibit 6 may only be released in accordance with the MPA.

You assert that the information in Exhibit 7 is excepted under section 552.102 of the Government Code. Section 552.102(a) of the Government Code excepts from required public disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." This exception applies when the release of information would result in a violation of the common-law right to privacy. *Hubert v. Harte-Hanks Tex. Newspapers*, 652 S.W.2d 546 (Tex. App.—Austin 1983, writ ref'd n.r.e.). The common-law right to privacy protects information that (1) contains highly intimate or embarrassing facts about a person's private affairs such that its release would be highly objectionable to a reasonable person and (2) is of no legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976). The types of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. This office has found that the following types of information are excepted from required public disclosure under common-law privacy: some kinds of medical information or information indicating disabilities or specific illnesses, *see* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps); personal financial information not relating to the financial transaction between an individual and a governmental body, *see* Open Records Decision Nos. 600 (1992), 545 (1990); and identities of victims of sexual abuse, *see* Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982). Upon review, we find that the information we have marked is intimate or embarrassing and not of legitimate public concern. Thus, the district must withhold the marked information under section 552.102(a) of the Government Code. However, the remaining information is not highly intimate or embarrassing; therefore, the remaining information is not confidential under section 552.102(a) of the Government Code, and the district may not withhold it on that ground.

You claim portions of the named individuals' college transcripts are excepted under section 552.102(b). 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, the district must withhold the information you have marked, in addition to the information we have marked, in the submitted transcripts in Exhibit 3 pursuant to section 552.102(b) of the Government Code.

We note that section 552.117 of the Government Code may be applicable to some of the remaining information. 552.117(a)(1) excepts from disclosure the current and former home addresses, 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. Gov't Code § 552.117 (a)(1). Whether a particular piece of information is protected under section 552.117 (a)(1) must be determined at the time the request for it is made. *See* Open

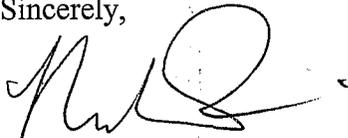
Records Decision No. 530 at 5 (1989). Pursuant to section 552.117(a)(1), the district must withhold personal information that pertains to a current or former employees of the district who elected, prior to the district's receipt of the request for information, to keep such information confidential. Such information may not be withheld for individuals who did not make a timely election. We have marked information that must be withheld if section 552.117 applies.

In summary, the district must withhold Exhibits 4 and 5 under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code. The district may only release Exhibit 6 in accordance with the MPA. The district must withhold the information we have marked in Exhibit 7 under section 552.102(a) of the Government Code. The district must withhold the information you have marked, in addition to the information we have marked, in Exhibit 3 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](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, toll free, at (888) 672-6787.

Sincerely,



Nneka Kanu  
Assistant Attorney General  
Open Records Division

NK/jb

Ref: ID# 363526

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)