



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 6, 2010

Ms. Lynn Rossi Scott  
Brackett & Ellis, P.C.  
100 Main Street  
Fort Worth, Texas 76102

OR2010-00234

Dear Ms. Scott:

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# 366452.

The Hurst-Eules-Bedford Independent School District (the "district"), which you represent, received a request for the following three categories of information: (1) information pertaining to the district's investigation of a specified district employee, (2) evaluations and disciplinary records of that employee, and (3) records of girls who have quit the volleyball team at a specified district high school. You state the district has redacted student-identifying information pursuant to the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232g.<sup>1</sup> You also state the district redacted the home address, telephone numbers, social security numbers, and family member information of certain current and former district employees, and provided notice to the requestor pursuant to

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<sup>1</sup>The United States Department of Education Family Policy Compliance Office (the "DOE") has informed this office that FERPA does not permit state and local educational authorities to disclose to this office, without parental 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 that 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>.

section 552.024(c-2).<sup>2</sup> You state the district has provided the requestor redacted copies of the requested information, with the exception of the records submitted to this office. You claim this remaining information is excepted from disclosure under sections 552.101 and 552.137 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. 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 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 at 3 (1996). In Open Records Decision No. 643, we determined that the word "administrator" in section 21.355 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.* Additionally, this office has determined that a teacher is someone who is required to hold and does hold a certificate or permit required under chapter 21 of the Education Code and is serving as a teacher at the time of the evaluation. *Id.* at 4.

You represent the named district employee is a certified teacher who also serves as a district athletic coordinator and coach. We understand this employee held appropriate teacher and/or administrator certificates at the time the submitted evaluations were conducted. Upon review, we agree most of the records you marked under section 21.355 are teacher or administrator evaluations for purposes of that section. *But see* Educ. Code § 21.353 (teachers shall be appraised only on basis of classroom teaching performance and not in connection with extracurricular activities). Thus, most of this information must be withheld under section 552.101 in conjunction with section 21.355 of the Education Code. However, the remaining records you marked under section 21.355 either are not completed or were completed by the district employee herself. We conclude these blank evaluation forms and self appraisal forms, which we marked for release, do not evaluate the district employee for purposes of section 21.355.

You also claim the marked e-mail address must be withheld under section 552.137 of the Government Code, which requires a governmental body to withhold the e-mail address of a member of the general public, unless the e-mail is a type excluded by subsection (c) or the

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<sup>2</sup>Section 552.024(c) of the Government Code authorizes a governmental body to redact, without the necessity of requesting a decision from this office, the home address, home telephone number, social security number, and family member information of a current or former employee who properly elected to keep this information confidential. Gov't Code § 552.024(c).

individual to whom the e-mail address belongs has affirmatively consented to its public disclosure. *See* Gov't Code § 552.137(b), (c). You inform this office the e-mail address you marked does not fall under subsection (c). We additionally marked two private e-mail addresses which do not appear to fall under subsection (c). Accordingly, we agree the marked e-mail addresses must be withheld under section 552.137 of the Government Code unless the individuals to whom they pertain have consented to their release.<sup>3</sup> As you raise no other exceptions to disclosure, 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,



Bob Davis  
Assistant Attorney General  
Open Records Division

RSD/cc

Ref: ID# 366452

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)

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<sup>3</sup>We note this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including e-mail addresses of members of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.