



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 26, 2010

Ms. Annie L. Stein
Thompson & Horton, L.L.P.
Attorney for Danbury Independent School District
711 Louisiana Street, Suite 2011
Houston, Texas 77002-2746

OR2010-04285

Dear Ms. Stein:

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# 375185.

The Danbury Independent School District (the "district"), which you represent, received a request for four categories of information pertaining to a named former district employee. You state the district has released some of the requested information to the requestor. You state the district is withholding an I-9 form, a W-4 form, and a copy of a Texas driver's license pursuant to Open Records Decision No. 684 (2009).¹ See Gov't Code § 552.301(a); Open Records Decision No. 673 at 7-8 (2001). You state you have also redacted social security numbers pursuant to section 552.147 of the Government Code.² You claim that portions of the submitted information are excepted from disclosure under sections 552.101,

¹We note this office recently issued Open Records Decision No. 684, a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including an I-9 form under section 552.101 of the Government Code in conjunction with section 1324a of title 8 of the United States Code, a W-4 form under section 552.101 of the Government Code in conjunction with section 6103(a) of title 26 of the United States Code, and a copy of a Texas driver's license under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

²Section 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).

552.102, and 552.117 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we must address the district's obligations under the Act. Pursuant to section 552.301(e) of the Government Code, the governmental body is required to submit to this office within fifteen business days of receiving the request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See* Gov't Code § 552.301(e). You state the district received the request for information on January 15, 2010. We note that this office does not count the date the request was received or holidays as business days for the purpose of calculating a governmental body's deadlines under the Act. You state the district was closed for business on January 18, 2010. Accordingly, the fifteen business-day deadline was February 8, 2010, which you acknowledge. However, the envelope in which you submitted your comments explaining the claimed exceptions and the requested information bears a postmark date of February 9, 2010. *See id.* § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Consequently, we find the district failed to comply with the requirements of section 552.301.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to submit to this office the information required in section 552.301(e) results in the legal presumption the requested information is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ); *see also* Open Records Decision No. 630 (1994). Generally, a governmental body may demonstrate a compelling reason to withhold information by showing the information is made confidential by another source of law or affects third party interests. *See* Open Records Decision No. 630 (1994). Because sections 552.101, 552.102, and 552.117 of the Government Code can provide compelling reasons to withhold information, we will consider your arguments under these exceptions.

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 exception encompasses information made confidential by statute. 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 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). In Open Records Decision No. 643, we determined that for purposes of section 21.355, the word "teacher" 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 and who is engaged in the process of teaching, as that term is commonly defined, at the time of the evaluation. *See id.* at 4.

You assert the information submitted as Exhibit C is confidential under section 21.355 of the Education Code. Upon review, we agree the documents at issue are evaluations for purposes of section 21.355. You have provided documentation showing the employee 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, we find the submitted evaluations in Exhibit C are confidential under section 21.355 of the Education Code, and must be withheld under section 552.101 of the Government Code.

Next, you claim that portions of the submitted transcripts in Exhibit D are excepted under section 552.102(b) of the Government Code, which excepts from disclosure all information from 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, with the exception of the former district employee's name, courses taken, and degree obtained, the district must withhold the transcripts in Exhibit D pursuant to section 552.102(b) of the Government Code.

You also assert that the home address of the former district employee is excepted under section 552.117 of the Government Code. Section 552.117(a)(1) excepts from public disclosure the present and former 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 timely requests that such information be kept confidential under section 552.024 of the Government Code. Whether a particular piece of information is protected by section 552.117 must be determined at the time the request is received by the governmental body. *See* Open Records Decision No. 530 at 5 (1989). The district may only withhold information under section 552.117(a)(1) on behalf of an employee who made a request for confidentiality under section 552.024 prior to the date on which the request for information was made. We note that a post office box number is not a "home address" for purposes of section 552.117.³ You have provided documentation showing that the former district employee timely elected confidentiality for his home address under section 552.024. Thus, the district must withhold the home address, which we have marked in Exhibits A and B, under section 552.117(a)(1) of the Government Code.

³*See* Gov't Code § 552.117; Open Records Decision No. 622 at 4 (1994) (legislative history makes clear that purpose of Gov't Code § 552.117 is to protect public employees from being harassed at home) (citing House Committee on State Affairs, Bill Analysis, H.B. 1976, 69th Leg. (1985); Senate Committee on State Affairs, Bill Analysis, H.B. 1976, 69th Leg. (1985)) (emphasis added).

We note some of the remaining information is subject to section 552.130 of the Government Code.⁴ Section 552.130 of the Government Code excepts from disclosure information relating to a motor vehicle operator's or driver's license or permit issued by an agency of this state. *See* Gov't Code § 552.130. Thus, the district must withhold the Texas driver's license number we have marked under section 552.130.

We also note a portion of the remaining information includes an e-mail address subject to section 552.137 of the Government Code. Section 552.137 excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body," unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See id.* § 552.137. The e-mail address in the remaining information is not of a type specifically excluded by section 552.137(c). As such, this e-mail address must be withheld under section 552.137, unless the owner of the address has affirmatively consented to its release.

In summary, the district must withhold the submitted evaluations in Exhibit C under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code. With the exception of the former district employee's name, courses taken, and degree obtained, the district must withhold the transcripts in Exhibit D pursuant to section 552.102(b) of the Government Code. The district must withhold the home address of the former district employee, which we have marked in Exhibits A and B, under section 552.117(a)(1) of the Government Code. The district must withhold the marked Texas driver's license number under section 552.130 of the Government Code and the marked e-mail address under section 552.137 of the Government Code, unless the owner of the e-mail address has affirmatively consented to its release.⁵ 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,

⁴The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

⁵We note Open Records Decision No. 684 also authorizes all governmental bodies to withhold a Texas driver's license number under section 552.130 of the Government Code and an e-mail address of a member of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision. *See* ORD 684.

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,

A handwritten signature in cursive script, appearing to read "C. Alvarado".

Christina Alvarado
Assistant Attorney General
Open Records Division

CA/rl

Ref: ID# 375185

Enc. Submitted documents

cc: Requestor
(w/o enclosures)