



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 28, 2010

Ms. Elisabeth A. Donley
Law Offices of Robert E. Luna
Attorney for Garland Independent School District
4411 North Central Expressway
Dallas, Texas 75205

OR2010-06067

Dear Ms. Donley:

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# 378639.

The Garland Independent School District (the "district"), which you represent, received two requests from the same requestor for several categories of information pertaining to a specified incident and a named district employee, as well as certain district policies and procedures. You state some of the requested information has been or will be made available to the requestor. You state you have redacted some of the requested information pursuant to the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code.¹ You also state you have redacted some information pursuant to

¹We note the United States Department of Education Family Policy Compliance Office (the "DOE") informed this office that FERPA, 20 U.S.C. § 1232g(a), 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>.

Open Records Decision No. 684 (2009).² Further, you state you have redacted social security numbers under section 552.147 of the Government Code.³ You argue a portion of the submitted information is not subject to the Act. You also claim that portions of the submitted information are excepted from disclosure under sections 552.101, 552.102, and 552.137 of the Government Code. We have considered your submitted arguments and reviewed the submitted information.

Initially, we address your contention that most of the submitted e-mails are not subject to the Act. The Act is only applicable to "public information." See Gov't Code § 552.021. Section 552.002(a) defines public information as "information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business: (1) by a governmental body; or (2) for a governmental body and the governmental body owns the information or has a right of access to it." *Id.* § 552.002(a). You assert that the majority of the submitted e-mails are not subject to the Act because they consist of personal e-mails that were not collected, assembled, or maintained pursuant to any law or ordinance or in connection with the transaction of any official business of the district. Upon review of the e-mails at issue, we agree they do not constitute "information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business" by or for the district. See *id.* § 552.021; see also Open Records Decision No. 635 (1995) (statutory predecessor not applicable to personal information unrelated to official business and created or maintained by state employee involving *de minimis* use of state resources). Thus, we conclude that these e-mails, which we have marked, are not subject to the Act and need not be released in response to this request.⁴

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. 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. 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,

²We 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 a Texas driver's license number and a copy of a Texas driver's license under section 552.130 of the Government Code as well as 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.

³Section 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).

⁴As our ruling for this information is dispositive, we need not address your raised exceptions against disclosure.

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 (1) is required to and does in fact hold a teaching certificate under subchapter B of chapter 21 of the Education Code 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 the information you have marked relates to a teacher who held a teaching certificate and was teaching at the time of the evaluations. Based on your representations and our review, we agree most of the information included in Exhibit E consists of teacher evaluations and a reprimand subject to section 21.355. Accordingly, the district must withhold the information we have marked in Exhibit E under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code. However, we conclude that the self appraisal forms do not evaluate the employee for purposes of section 21.355. Therefore, the district may not withhold this information under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code.

Section 552.101 of the Government Code also encompasses section 21.048 of the Education Code, which addresses teacher certification examinations. Section 21.048(c-1) provides the following:

The results of an examination administered under this section are confidential and are not subject to disclosure under Chapter 552, Government Code, unless:

- (1) the disclosure is regarding notification to a parent of the assignment of an uncertified teacher to a classroom as required by Section 21.057; or
- (2) the educator has failed the examination more than five times.

Educ. Code § 21.048(c-1). You state Exhibit D includes teacher certification exam results for the district employee. You further state subsections 21.048(c-1)(1) and (2) are not applicable in this instance. Based on your representations and our review, we agree the district must withhold the information included in Exhibit D under section 552.101 of the Government Code in conjunction with section 21.048(c-1) of the Education Code.

You claim some of the remaining information is excepted from disclosure on the basis of common-law privacy, which is also encompassed by section 552.101. Common-law privacy

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. *See id.* at 681-82. 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. *See id.* at 683. This office has found that some kinds of medical information or information indicating disabilities or specific illnesses are excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). Upon review, we find the information you have marked in Exhibit C is highly intimate or embarrassing and not of legitimate public concern. Thus, the district must withhold this information pursuant to section 552.101 of the Government Code in conjunction with common-law privacy.

Next, you claim the transcripts in Exhibit F are excepted from disclosure under section 552.102(b) of the Government Code. Section 552.102(b) 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 district employee's name, courses taken, and degree obtained, the district must withhold the transcripts in Exhibit F pursuant to section 552.102(b) of the Government Code.

In summary, the e-mails we have marked are not subject to the Act, and need not be released in response to this request. The district must withhold the information we have marked in Exhibit E under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code. The district must withhold the information included in Exhibit D under section 552.101 of the Government Code in conjunction with section 21.048(c-1) of the Education Code. The district must withhold the information you have marked in Exhibit C under section 552.101 of the Government Code in conjunction with common-law privacy. With the exception of the district employee's name, courses taken, and degree obtained, the district must withhold the transcripts in Exhibit F pursuant to 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, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink that reads "C. Alvarado". The signature is written in a cursive style with a large initial "C" and a clear last name.

Christina Alvarado
Assistant Attorney General
Open Records Division

CA/rl

Ref: ID# 378639

Enc. Submitted documents

cc: Requestor
(w/o enclosures)