ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 14, 2010

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

OR2010-08618

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# 382619.

Meyersville Independent School District (the "district"), which you represent, received a request for 1) the posted school board agenda, actual school board minutes, and all handout booklets given to board members for all board meetings during a specified time period; 2) a copy of the 2009-2010 bus routes, including a list of the students assigned to each route; and 3) all correspondence to or from a named individual.[1] You state you will release most of the requested information to the requestor. You claim portions of the submitted information are excepted from disclosure under sections 552.101, 552.102, 552.107, and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.[2] We have also received and

[1]We note the district received clarification regarding this request. *See* Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information).

[2]We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

considered comments from the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, we address the requestor's contention that the district failed to meet its obligations under the Act. Pursuant to section 552.301(b) of the Government Code, a governmental body must ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request. You state the district received the request for information on March 12, 2010. However, this office did not receive the district's request for a ruling until April 6, 2010. You do not inform us the district was closed for any business days between March 12, 2010, and April 6, 2010. Therefore, we find you have not provided this office with satisfactory proof the district requested a ruling from this office within the ten business day deadline. *See id.* § 552.308(a)(2). Consequently, the district failed to comply with the requirements mandated by section 552.301.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the requirements of section 552.301 results in the legal presumption the requested information is public and must be released, unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *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, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); *see also* Open Records Decision No. 630 (1994). Generally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third party interests are at stake. Open Records Decision No. 150 at 2 (1977). You assert portions of the submitted information are excepted under sections 552.107 and 552.111 of the Government Code. These sections, however, are discretionary in nature. They serve only to protect a governmental body's interests, and may be waived; as such, they do not constitute compelling reasons to withhold information for purposes of section 552.302. *See* Open Records Decision Nos. 677 at 10 (2002) (attorney work-product privilege under section 552.111 not compelling reason to withhold information under section 552.302), 676 at 10-11 (2002) (attorney-client privilege under section 552.107(1) may be waived), 665 at 2 n.5 (2000) (discretionary exceptions in general), 663 at 5 (1999) (waiver of discretionary exceptions). Thus, no portion of the submitted information may be withheld under section 552.107 or section 552.111 of the Government Code. However, because sections 552.101 and 552.102 of the Government Code can provide compelling reasons to withhold information, we will consider the applicability of these exceptions to the requested 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. Section 21.355 of the Education Code provides that "[a] document evaluating the performance of a teacher or administrator is confidential." 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. *See* Open Records Decision No. 643 (1996). In Open Records Decision No. 643, we determined that an "administrator" for purposes of 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. *See id.* at 4.

You state, and provide supporting documentation, that the information at issue relates to a administrator who held the appropriate administrator's certification and was functioning as an administrator during the relevant time period. Based on your representations and our review of the information at issue, we conclude that the information we have marked consists of an administrator evaluation for the purposes of section 21.355, and the district must withhold this information under section 552.101 of the Government Code. However, we find the remaining information at issue does not consist of an evaluation of the performance of an administrator for purposes of section 21.355. Accordingly, the district may not withhold the remaining information at issue under section 552.101 on that ground. As you raise no further exceptions to disclosure of this information, it must be released to the requestor.

Section 552.101 also encompasses chapter 411 of the Government Code. Criminal history record information ("CHRI") generated by the National Crime Information Center or by the Texas Crime Information Center is confidential under federal and state law. Gov't Code § 411.083(a); Open Records Decision No. 565 (1990). Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 at 7 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* Section 411.083 of the Government Code deems confidential CHRI the Department of Public Safety ("DPS") maintains, except DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See* Gov't Code § 411.083. A school district may obtain CHRI from DPS as authorized by section 411.097 and subchapter C of chapter 22 of the Education Code; however, a school district may not release CHRI except as provided by section 411.097(d). *See id.* § 411.097(d); Educ. Code § 22.083(c)(1) (authorizing school district to obtain from any law enforcement or criminal justice agency all CHRI relating to school district employee); *see also* Gov't Code § 411.087. Section 411.087 authorizes a school district to obtain CHRI from the Federal Bureau of Investigation or any other criminal justice agency in this state. Gov't Code § 411.087. Thus, any CHRI generated by the federal government or another state may not be made available to the requestor except in accordance with federal regulations. *See* ORD 565. Furthermore, any CHRI the district obtained from DPS or any other criminal justice agency in this state must be withheld under section 552.101 of the Government Code in conjunction with section 411.097(d) of the Government Code. *See* Educ. Code § 22.083(c)(1). In this instance, we find you have failed to establish that the information you seek to withhold constitutes CHRI generated by the National Crime Information Center or by the Texas Crime

Information Center. Accordingly, the district may not withhold any portion of the information at issue under section 552.101 in conjunction with chapter 411 of the Government Code.

Section 552.102(a) of the Government Code excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Gov't Code § 552.102(a). In *Hubert v. Harte-Hanks Texas Newspapers*, 652 S.W.2d 546 (Tex. App.—Austin 1983, writ ref'd n.r.e.), the court ruled that the test to be applied to information claimed to be protected under section 552.102(a) is the same as the test formulated by the Texas Supreme Court in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976) for information claimed to be protected under the doctrine of common-law privacy as incorporated by section 552.101 of the Government Code. For information to be protected from public disclosure by the common-law right of privacy under section 552.101, the information must meet the criteria set out in *Industrial Foundation*. In *Industrial Foundation*, the Texas Supreme Court stated that information is excepted from disclosure if (1) the information contains highly intimate or embarrassing facts, the release of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Id.* at 685. To demonstrate the applicability of common-law privacy, both prongs of this test must be demonstrated. *See id.* at 681-82.

This office has found that some kinds of medical information or information indicating disabilities or specific illnesses are excepted from required public disclosure. *See* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). In addition, a compilation of an individual's criminal history record information is highly embarrassing information, the publication of which would be highly objectionable to a reasonable person. *Cf. U.S. Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (when considering prong regarding individual's privacy interest, court recognized distinction between public records found in courthouse files and local police stations and compiled summary of information and noted that individual has significant privacy interest in compilation of one's criminal history). Furthermore, we find that a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. Upon review, we find the information we have marked is highly intimate or embarrassing and of no legitimate public concern. Therefore, the district must withhold the information we have marked under section 552.102(a) of the Government Code. However, we find there is a legitimate public interest in the criminal history of individuals who are working with children in a public school. *See* Educ. Code § 22.0835. Furthermore, we find none of the remaining information you seek to withhold is highly intimate or embarrassing. Accordingly, the district may not withhold any of the remaining information you seek to withhold under section 552.102(a) of the Government Code.

We note portions of the remaining information may be confidential under section 552.117 of the Government Code.[3] Section 552.117(a)(1) of the Government Code excepts from disclosure the 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 that this information be kept confidential under section 552.024 of the Government Code. *See* Gov't Code §§ 552.117(a)(1), .024. Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Accordingly, to the extent the information we have marked pertains to current or former district employees who timely elected confidentiality pursuant to section 552.024, the district must withhold this information under section 552.117(a)(1) of the Government Code. To the extent the information we have marked does not pertain to current or former district employees or pertains to current or former district employees who did not timely elect to keep their information confidential, the district may not withhold this information under section 552.117(a)(1) of the Government Code.

We note the remaining information includes an e-mail address. Section 552.137 of the Government Code 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). Gov't Code § 552.137(a)-(c). We note that section 552.137 does not apply to a government employee or official's work e-mail address because such an address is not that of the employee or official as a "member of the public" but is instead the address of the individual as a governmental employee or official. We also note section 552.137 is not applicable to the general e-mail address of a business or organization. Therefore, to the extent the e-mail address we have marked is a personal e-mail address, the district must withhold this e-mail address under section 552.137 of the Government Code, unless the owner has affirmatively consented to its public release.[4]

In summary, the district must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code. The district must withhold the information we have marked under section 552.102(a) of the Government Code. The district must withhold the information we marked under section 552.117(a)(1) of the Government Code to the extent it pertains to current or former district employees who timely elected confidentiality. To the extent the

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

[4]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 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.

e-mail address we have marked is a personal e-mail address, the district must withhold this e-mail addresses under section 552.137 of the Government Code, unless the owner has affirmatively consented to its public release. The remaining information must be released to the requestor.

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,

Adam Leiber
Assistant Attorney General
Open Records Division

ACL/em

Ref: ID# 382619

Enc. Submitted documents

c: Requestor
(w/o enclosures)