



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 6, 2010

Ms. Melanie L. Hollmann
Atkins, Hollmann, Jones, Peacock, Lewis & Lyon
3800 East 42nd Street, Suite 500
Odessa, Texas 79762

OR2010-09906

Dear Ms. Hollmann:

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# 385627.

The Ector County Independent School District (the "district"), which you represent, received two requests for information pertaining to a named individual. You state you have released a portion of the requested information. You further state the you have redacted information pursuant to the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232(a).¹ You claim that the submitted information is excepted from disclosure under sections 552.101, 552.102, and 552.117 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note you have marked information in Category 1 of the submitted information that is not responsive to the instant request. The district need not release non-responsive information in response to this request, and this ruling will not address the public availability of that information.

¹The 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 552.101 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, such as section 21.355 of the Education Code. Section 21.355 provides “[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 (1996). In that opinion, this office also concluded a teacher is someone who is required to hold and does hold a certificate required under chapter 21 of the Education Code and is teaching at the time of his or her evaluation. *Id.* 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.).

You state the information in Category 3 relates to a teacher who held the appropriate teaching certificate and was teaching at the time of the evaluations. Based on your representations and our review, we agree that the information we have marked consists of teacher evaluations subject to section 21.355. However, we conclude that the remaining information in Category 3, including self report forms, does not evaluate the employee for purposes of section 21.355. Accordingly, the district must withhold the information we have marked in Category 3 under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code.

Section 552.102 of the Government Code excepts from public disclosure “a transcript from an institution of higher education maintained in the personnel file of a professional public school employee[.]” Gov’t Code § 552.102(b). This exception further provides, however, that “the degree obtained or the curriculum on a transcript in the personnel file of the employee” are not excepted from disclosure. *Id.*; see also Open Records Decision No. 526 (1989). Thus, with the exception of the employee’s name, courses taken, and degree obtained, the district must withhold the submitted transcripts in Category 4 pursuant to section 552.102(b) of the Government Code.²

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. Gov’t Code § 552.117(a)(1). We note that a post office box number is not a “home address” for purposes of section 552.117. See *id.*; Open Records Decision No. 622 at 4 (1994) (legislative history makes clear that purpose of section 552.117 is to protect public employees from being

²As our ruling is dispositive for this information, we need not address your remaining argument against disclosure.

harassed *at home*) (citing House Committee on State Affairs, Bill Analysis, H.B. 1979, 69th Leg. (1985)) (emphasis added). We note that section 552.117 does not encompass an employee's date of birth. Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body's receipt of the request for information. See Open Records Decision No. 530 at 5 (1989). Thus, information may only be withheld under section 552.117(a)(1) on behalf of a current or former employee who made a request for confidentiality under section 552.024 prior to the date of the governmental body's receipt of the request for information. Information may not be withheld under section 552.117(a)(1) on behalf of a current or former official or employee who did not timely request under section 552.024 that the information be kept confidential. You inform us that the named individual timely elected confidentiality under section 552.024. Therefore, you must withhold the information we have marked in Categories 2 and 3 for the named individual under section 552.117(a)(1) of the Government Code. Additionally, to the extent the remaining employee whose information is at issue timely elected confidentiality under section 552.024, the district must withhold the information we have marked in Category 2 under section 552.117(a)(1) of the Government Code. If the remaining employee did not timely elect confidentiality, the district may not withhold this information under section 552.117(a)(1).³

In summary, the district must withhold the information we marked in Category 3 under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code. With the exception of the employee's name, courses taken, and degree obtained, the district must withhold the submitted transcripts in Category 4 pursuant to section 552.102(b) of the Government Code. The district must withhold the information we have marked in Categories 2 and 3 regarding the named individual under section 552.117(a)(1) of the Government Code. To the extent the remaining employee whose information is at issue timely elected confidentiality under section 552.024, the district must withhold the information we have marked in Category 2 regarding this employee under section 552.117(a)(1) of the Government Code. The remaining responsive 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)

³Regardless of the applicability of section 552.117, 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.

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,



Andrea L. Caldwell
Assistant Attorney General
Open Records Division

ALC/eeg

Ref: ID# 385627

Enc. Submitted documents

c: Requestor
(w/o enclosures)