



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 20, 2010

Ms. Andrea Sheehan  
Ms. Elisabeth A. Donley  
Law Offices of Robert E. Luna, P.C.  
4411 North Central Expressway  
Dallas, Texas 75205

OR2010-10798

Dear Ms. Sheehan and 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# 387154.

The Carrollton-Farmers Branch Independent School District (the "district"), which you represent, received a request for documents, notes, and other documentation from a named law firm and a named individual regarding R. L. Turner High School. You state the district has redacted information pursuant to the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232g.<sup>1</sup> You state some of the responsive information will be released to the requestor. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.117, 552.136, 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

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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>.

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 Exhibit C relates to a teacher who held the appropriate teaching certificate and was teaching at the time of the evaluations. However, we find that the submitted information in Exhibit C, including self report forms and e-mails, does not evaluate the employee for purposes of section 21.355. Accordingly, the district may not withhold the information in Exhibit C 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 37.108 of the Education Code. Section 37.108 provides in part:

(b) At least once every three years, each school district or public junior college district shall conduct a safety and security audit of the district’s facilities. To the extent possible, a district shall follow safety and security audit procedures developed by the Texas School Safety Center or a comparable public or private entity.

...

(c-1) Except as provided by Subsection (c-2), any document or information collected, developed, or produced during a safety and security audit conducted under Subsection (b) is not subject to disclosure under Chapter 552, Government Code.

Educ. Code § 37.108(b), (c-1). You state the submitted School Crisis Plan in Exhibit D was collected, developed, or produced during a safety and security audit of the district’s facilities. *See id.* § 37.108(b). You contend that none of the exceptions in subsection (c-2) are applicable to this information. *See id.* § 37.108(c-2) (listing types of documents relating to district’s multihazard emergency operations plan subject to disclosure). Thus, having considered your arguments and reviewed the information, we agree the School Crisis Plan

in Exhibit D must be withheld under section 552.101 in conjunction with section 37.108(c-1) of the Education Code.<sup>2</sup>

Section 552.101 also encompasses the common-law right of privacy, which 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. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be established. *Id.* at 681-82. The types of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* include 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. *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). We note that the right of privacy lapses at death; thus, information may not be withheld on the basis of the privacy interests of a deceased individual. See *Moore v. Charles B. Pierce Film Enters. Inc.*, 589 S.W.2d 489 (Tex. Civ. App.—Texarkana 1979, writ ref'd n.r.e.); see also *Justice v. Belo Broadcasting Corp.*, 472 F. Supp. 145, 146-47 (N.D. Tex. 1979); Attorney General Opinions JM-229 (1984), H-917 (1976); Open Records Decision No. 272 at 1 (1981). You have marked information that you claim is excepted under the doctrine of common-law privacy. However, much of the information you have marked pertains to a deceased individual. Consequently, this information is not confidential under common-law privacy and may not be withheld under section 552.101. Additionally, we find that the remaining information you have marked is not highly intimate or embarrassing and of no legitimate public concern. Therefore, none of the submitted information may be withheld under section 552.101 in conjunction with common-law privacy.

Section 552.117(a)(1) of the Government Code excepts from disclosure the 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 requests that this information be kept confidential under section 552.024 of the Government Code. See Gov't Code § 552.117(a)(1). We note that section 552.117 encompasses a personal cellular telephone number, provided that a governmental body does not pay for the cell phone service. See Open Records Decision No. 506 at 5-6 (1988) (section 552.117 not applicable to cellular telephone numbers paid for by governmental body and intended for official use). 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

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<sup>2</sup>As our ruling for this information is dispositive, we do not address your remaining arguments against disclosure.

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. However, you state the election form on record only permits the employees at issue to request confidentiality for their home address, telephone number, and social security number. Thus, the employees at issue did not request confidentiality for their family member information. Therefore, to the extent the employees at issue made timely requests for confidentiality under section 552.024, you must withhold the information we have marked in Exhibit E under section 552.117(a)(1) of the Government Code. However, the district may only withhold the marked cellular telephone numbers if they are personal cellular telephone numbers and the cellular services were paid for with personal funds. If the employees did not timely elect confidentiality for the marked information, the district may not withhold the marked information under section 552.117(a)(1) of the Government Code.

Section 552.136 of the Government Code states that "[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." Gov't Code § 552.136; *see id.* § 552.136(a) (defining "access device"). Accordingly, we find the personal identification number you have marked in Exhibit F must be withheld under section 552.136 of the Government Code.

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). *See* Gov't Code § 552.137(a)-(c). You have marked an e-mail address within the submitted information in Exhibit E that is subject to section 552.137(a). Accordingly, the district must withhold the e-mail address you have marked in Exhibit E pursuant to section 552.137 of the Government Code, unless the owner affirmatively consents to its disclosure.<sup>3</sup>

In summary, the district must withhold Exhibit D under section 552.101 of the Government Code in conjunction with section 37.108(c-1) of the Education Code. The district must withhold the information we have marked in Exhibit E under section 552.117 of the Government Code if the employees at issue timely elected to keep their information confidential; however, the district may only withhold the marked cellular telephone numbers

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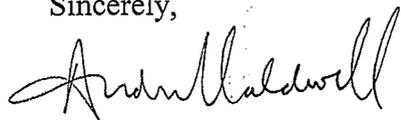
<sup>3</sup>As you acknowledge, this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including an e-mail address of a member of the public, under section 552.137 of the Government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

if they are personal cellular telephone numbers and the cellular telephone services are paid for with personal funds. The district must withhold the information you have marked in Exhibit F under section 552.136 of the Government Code. The district must withhold the e-mail address you have marked in Exhibit E under section 552.137 of the Government Code, unless the owner affirmatively consents to its 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,



Andrea L. Caldwell  
Assistant Attorney General  
Open Records Division

ALC/eeg

Ref: ID# 387154

Enc. Submitted documents

c: Requestor  
(w/o enclosures)