



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 28, 2010

Ms. Cheryl T. Mehl  
Schwartz & Eichelbaum  
Wardell, Mehl, and Hansen, P.C.  
4201 West Parmer Lane, Suite A-100  
Austin, Texas 78727

OR2010-14737

Dear Ms. Mehl:

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# 395277.

The Temple Independent School District (the "district"), which you represent, received a request for records pertaining to a named individual. You state the district has released most of the requested information to the requestor. You claim the submitted information is excepted from disclosure under sections 552.101, 552.102, and 552.117 of the Government Code.<sup>1</sup> 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 Code § 552.101. Section 552.101 encompasses information protected by other statutes, including section 21.355 of the Education Code, which provides that "[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

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<sup>1</sup>Although you raise section 552.024 of the Government Code as an exception to disclosure of the named individual's personal information, we understand you to claim section 552.117 of the Government Code, as this is the proper exception.

Records Decision No. 643 at 3 (1996). In Open Records Decision No. 643, we determined the word "teacher" in section 21.355 means a person who is required to and does in fact hold a teacher's certificate under subchapter B of chapter 21 of the Education Code and is performing the functions of a teacher, as that term is commonly defined, at the time of the evaluation. *Id.*

You claim the records submitted in Exhibit 4 are teaching evaluations of the named individual. You provide documentation reflecting the time periods during which the named individual has been certified as a classroom teacher. Upon review, we agree most of the records in Exhibit 4 are teacher evaluations for purposes section 21.355. Thus, most of this information must be withheld under section 552.101 in conjunction with section 21.355 of the Education Code. However, the remaining records in Exhibit 4 either (1) reflect they evaluated the individual at a time she did not hold the proper teacher certification, (2) were completed by the individual herself, or (3) consist of an acknowledgment form that does not contain any form of evaluation. We conclude these remaining documents in Exhibit 4, which we marked for release, do not evaluate the district employee for purposes of section 21.355 and, therefore, may not be withheld under section 552.101 on that basis.

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). Exhibit 3 consists of ExCET exam results for the named individual. We note subsection 21.048(c-1)(1) is not applicable in this instance. Furthermore, the information reflects the educator has not failed the examination more than five times. Thus, we agree Exhibit 3 is confidential under section 21.048(c-1) of the Education Code and the district must withhold this information under section 552.101 of the Government Code.

You raise section 552.102(b) of the Government Code for portions of the named individual's university transcripts submitted in Exhibit 6. 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). Upon review, we have marked the information that may not be withheld under section 552.102(b). With the exception of the name, courses taken, and degree obtained we have marked, the district must withhold the transcripts submitted in Exhibit 6 under section 552.102(b) of the Government Code. The information we marked must be released.

Section 552.117 of the Government Code excepts from public disclosure the present and former home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who timely request that such information be kept confidential under section 552.024 of the Government Code. Gov't Code § 552.117(a)(1). 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). The district may only withhold information under section 552.117(a)(1) on behalf of current or former employees who made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made.

You state Exhibit 2 contains the named individual's current and former election forms. You claim the named individual's home address and telephone number information you marked on these forms are excepted under section 552.117(a)(1) of the Government Code. These documents reflect that, at the time the district received the request, the named individual had elected to withhold her home telephone number, but not her home address, from the public. Therefore, the district must withhold this individual's home telephone number, which you highlighted, under section 552.117 of the Government Code. However, because this individual did not elect to withhold her home addresses, this information must be released. We note the forms in Exhibit 2 do not provide an option for the named individual to elect for the confidentiality of her family member information. Therefore, this individual's family member information may only be withheld if, before the district received this request, the named individual properly elected to keep such information confidential using a different form. If the named individual properly elected pursuant to section 552.024, then the district must withhold the family member information we marked in Exhibit 2 under section 552.117(a)(1) of the Government Code. If the named individual did not so elect, this information may not be withheld.

In summary, with the exception of the information we marked for release, the district must withhold Exhibit 4 under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code. The district must withhold Exhibit 3 under section 552.101 of the Government Code in conjunction with section 21.048 of the Education Code. With the exception of the name, courses taken, and degree obtained we marked, the district must withhold the transcripts submitted in Exhibit 6 under section 552.102(b) of the Government Code. The district must also withhold the home telephone numbers you highlighted in Exhibit 2 under section 552.117(a)(1) of the Government Code. Finally, if the named individual properly elected to keep her family

member information confidential, then the district must withhold the information we marked in Exhibit 2 under section 552.117(a)(1) of the Government Code. The remaining submitted 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,

A handwritten signature in black ink, appearing to read 'Bob Davis', with a long, sweeping underline that extends to the right.

Bob Davis  
Assistant Attorney General  
Open Records Division

RSD/tp

Ref: ID# 395277

Enc. Submitted documents

c: Requestor  
(w/o enclosures)