



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 15, 2010

Mr. Robb D. Decker
Walsh, Anderson, Brown, Gallegos and Green, P.C.
P.O. Box 460606
San Antonio, Texas 78246

OR2010-15734

Dear Mr. Decker:

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# 397781.

The Poteet Independent School District (the "district"), which you represent, received a request for the personnel file of a named individual. You state you have released some information to the requestor. You state you will redact social security numbers pursuant to section 552.147 of the Government Code.¹ You claim the submitted information is excepted from disclosure under sections 552.101 and 552.102 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also received and considered comments submitted by 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 claim the district failed to comply with the procedural requirements of the Act in requesting a decision from this office. 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. *See id.* § 552.301(b). Pursuant to section 552.301(d), a governmental body must provide the requestor with (1) a written statement that the governmental body wishes to withhold the requested information and has asked for a decision from the attorney general,

¹Section 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.

and (2) a copy of the governmental body's written communication to the attorney general within ten business days of receiving the request for information. *Id.* § 552.301(d). The district received the request for information on August 2, 2010. The district informs us that it was closed for business on August 6, 2010, and August 13, 2010. Accordingly, the district's ten-business-day deadline was August 18, 2010. The district's request for a ruling from this office is postmarked August 18, 2010. *Id.* § 552.308(a) (describing rules for calculating submission dates of documents sent via first class United States mail). Additionally, the submitted information reflects, and the requester acknowledges, that the requestor was mailed a copy of the district's request for a ruling concurrent with the district's timely submission to this office. Therefore, we find the district complied with sections 552.301(b) and (d) of the Government Code.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. Section 552.101 of the Government Code encompasses information made confidential by other statutes, such as 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 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). We have determined that for the purposes of section 21.355, the word "teacher" means a person who is required to and does in fact hold a teaching certificate under subchapter B of chapter 21 of the Education Code or a school district teaching permit under section 21.055 and who is engaged in the process of teaching, as that term is commonly defined, at the time of the evaluation. *See* ORD 643 at 4. We also have determined that the word "administrator" in 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. *Id.*

The district contends that the information submitted as pages AG-0004 through AG-0089 consists of evaluations of a teacher or administrator who was required to and did hold the appropriate certificates under chapter 21 of the Education Code. Based on the district's representations and our review of the information at issue, we agree most of the information submitted as pages AG-0004 through AG-0089 consists of evaluations that the district must withhold under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code. However, we find that the information we have marked for release at pages AG-0068 through AG-0071 does not constitute an evaluation of a teacher or administrator as contemplated by section 21.355. Accordingly, 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. As you raise no further exceptions against disclosure of this information, it must be released to the requestor.

You claim the documents submitted at pages AG-0090 through AG-0095 contain information protected under the Medical Practices Act ("MPA"). Section 552.101 of the

Government Code also encompasses information protected by the MPA, chapter 159 of the Occupations Code. Section 159.002 of the MPA provides in part:

(b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.

(c) A person who receives information from a confidential communication or record as described by this chapter, other than a person listed in Section 159.004 who is acting on the patient's behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

Occ. Code § 159.002(b)-(c). This office has concluded that the protection afforded by section 159.002 extends only to records created by either a physician or someone under the supervision of a physician. *See* Open Records Decision Nos. 487 (1987), 370 (1983), 343 (1982). Upon review, we agree some of the information at issue, which we have marked at pages AG-0090 through AG-0092, constitutes confidential medical records that may only be released in accordance with the MPA. However, none of the remaining information at issue consists of medical records that are subject to the MPA, and none of it may be withheld under section 552.101 on that basis.

You assert portions of the remaining information are excepted from disclosure under common-law privacy, which is also encompassed by section 552.101 of the Government Code. The doctrine of 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. *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 satisfied. *Id.* at 681-82. This office has found some kinds of medical information or information indicating disabilities or specific illnesses is protected by 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 agree that portions of the information at issue are highly intimate or embarrassing and not of legitimate public concern. Therefore, the district must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find that the remaining information at issue is either not highly intimate or embarrassing or is of legitimate public interest. Thus, the remaining information at issue is not confidential under common-law privacy, and the district may not withhold it under section 552.101 on that ground.

Next, you claim portions of the transcripts submitted as pages AG-0001 through AG-0003 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). Accordingly, with the exception of the district employee's name, courses taken, and degree obtained, we agree the district must withhold the transcripts submitted as pages AG-0001 through AG-0003 pursuant to section 552.102(b) of the Government Code.

In summary, except for the information we have marked for release, the district must withhold pages AG-0004 through AG-0089 under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code. The medical records we have marked at pages AG-0090 through AG-0092 may only be released in accordance with the MPA. The district must withhold the information we have marked 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 submitted as pages AG-0001 through AG-0003 pursuant to section 552.102(b) of the Government Code. The remaining submitted 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,



Amy L.S. Shipp
Assistant Attorney General
Open Records Division

ALS/tp

Ref: ID# 397781

Enc. Submitted documents

c: Requestor
(w/o enclosures)