



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 10, 2010

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

OR2010-17077

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# 399750.

The Carrollton-Farmers Branch Independent School District (the "district"), which you represent, received a request for information pertaining to any payments, billings or reimbursements for legal services on behalf of a named employee and all personnel records pertaining to the same employee. You state the district has no information responsive to the request for information pertaining to any payments, billings or reimbursements for legal services on behalf of the named employee.<sup>1</sup> You also state the district has redacted information pursuant to the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232g.<sup>2</sup> You further state the district has released some of the requested personnel

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<sup>1</sup>The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

<sup>2</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>.

information with redactions pursuant to sections 552.024 and 552.147 of the Government Code and Open Records Decision No. 684 (2009).<sup>3</sup> You claim portions of the submitted information are excepted from disclosure under sections 552.101, 552.102, 552.117, and 552.147 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 Code § 552.101. This section encompasses information protected 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). In Open Records Decision No. 643, we determined for purposes of section 21.355, the word “administrator” 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* ORD 643 at 4. We note the Third Court of Appeals has held a written reprimand constitutes an evaluation for purposes of section 21.355. *See Abbott v. North East Indep. Sch. Dist.*, 212 S.W.3d 364 (Tex. App.—Austin 2006, no pet.).

You assert the documents in Exhibit B-1 consist of evaluations of a district administrator. You state that the administrator in Exhibit B-1 was required to hold and did hold a certificate or permit required under Chapter 21 of the Education Code at the time of the evaluations. Upon review, we conclude that most of the information in Exhibit B-1 is confidential under section 21.355 of the Education Code and must be withheld under section 552.101 of the Government Code. However, we conclude the remaining information in Exhibit B-1, which consists of a self-evaluation form completed by the administrator, a document from Region 10 Education Service Center, and a Texas Educator Certificate, does not evaluate the administrator for purposes of section 21.355. Therefore, the district may not withhold this information, which we have marked for release, 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 21.048 of the Education Code, which provides the following:

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<sup>3</sup>We note section 552.024(c) of the Government Code authorizes a governmental body to redact, without the necessity of requesting a decision from this office, the home address, home telephone number, social security number, and family member information of a current or former employee who properly elected to keep his information confidential. Gov’t Code § 552.024(c). We also note 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. *See id.* § 552.147(b). Furthermore, Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including Texas driver’s license numbers under section 552.130 of the Government Code and personal e-mail addresses under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

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). The information you have marked in Exhibit B-2 consists of a TEXES exam result. You further state subsections 21.048(c-1)(1) and (2) are not applicable in this instance. Based on your representations and our review, we agree the district must withhold the information you have marked in Exhibit B-2 under section 552.101 of the Government Code in conjunction with section 21.048(c-1) of the Education Code.

You claim the administrator's college transcripts submitted in Exhibit B-3 are excepted under section 552.102 of the Government Code, which excepts from disclosure all information in transcripts of a professional public school employee 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). Thus, with the exception of the administrator's name, courses taken, and degree obtained, the district must withhold the transcripts in Exhibit B-3 under section 552.102(b) of the Government Code.

You claim some of the information in Exhibit B-4 is excepted from disclosure under section 552.117 of the Government Code. Section 552.117(a)(1) 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* 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 state that prior to the request, the employee at issue had elected confidentiality for his home address and telephone number. You state that after the request was received, the employee elected confidentiality for family member information. Thus, the employee at issue did not timely elect confidentiality for his

family member information. Therefore, the district must withhold the information we have marked in Exhibit B-4 under section 552.117(a)(1) of the Government Code. However, the district may only withhold the marked cellular telephone number if it is a personal cellular telephone number and the cellular service was paid for with personal funds.

We note some of the remaining information in Exhibit B-4 is subject to section 552.137 of the Government Code, which 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).<sup>4</sup> See Gov't Code § 552.137(a)-(c). The district must withhold the e-mail address we have marked in Exhibit B-4 pursuant to section 552.137 of the Government Code, unless the owner affirmatively consents to its disclosure.<sup>5</sup>

Finally, section 552.147 of the Government Code provides that "[t]he social security number of a living person is excepted from" required public disclosure under the Act. Gov't Code § 552.147(a). The district may withhold the social security number you have marked, as well as the social security number we have marked, in the remaining information under section 552.147.<sup>6</sup>

In summary, the district must withhold the information Exhibit B-1, except as we have marked for release, under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code. The district must withhold the information you have marked in Exhibit B-2 under section 552.101 of the Government Code in conjunction with section 21.048 of the Education Code. With the exception of the administrator's name, courses taken, and degree obtained, the district must withhold the transcripts in Exhibit B-3 under section 552.102(b) of the Government Code. The district must withhold the information we have marked in Exhibit B-4 under section 552.117(a)(1) of the Government Code. The district must withhold the e-mail address we have marked in Exhibit B-4 pursuant to section 552.137 of the Government Code, unless the owner affirmatively consents to its disclosure. The district may withhold the marked social security numbers in the remaining information under section 552.147 of the Government code. The remaining submitted information must be released.

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<sup>4</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

<sup>5</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.

<sup>6</sup>As noted previously, 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. Gov't Code § 552.147.

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 cursive script that reads "Tamara H. Holland".

Tamara H. Holland  
Assistant Attorney General  
Open Records Division

THH/em

Ref: ID# 399750

Enc. Submitted documents

c: Requestor  
(w/o enclosures)