



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 18, 2010

Mr. Ronn P. Garcia
Underwood
P.O. Box 16197
Lubbock, Texas 79490

OR2010-17488

Dear Mr. Garcia:

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# 400464.

The Coahoma Independent School District (the "district") received a request for all employment and disciplinary records for a named individual, including records or letters related to his departure from the district. You state you have provided the requestor with some of the requested information with redactions pursuant to section 552.147 of the Government Code.¹ You claim that 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.

Initially, we note that you have redacted information from the submitted documents in Exhibit G that you seek to withhold. You do not assert, nor does our review of our records indicate, that you have been authorized to withhold this information without seeking a ruling from this office. *See* Gov't Code § 552.301(a); Open Records Decision No. 673 (2001). As we are able in this instance to ascertain the nature of the information you have redacted, we will determine whether it is excepted from public disclosure. In the future, the district must not redact requested information that it submits to this office in seeking an open records

¹We note that 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.

ruling, unless the information is the subject of a previous determination under section 552.301. *See* Gov't Code §§ 552.301(e)(1)(D), .302. Failure to comply with section 552.301 may result in the information being presumed public under section 552.302. *See id.*

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 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 an administrator is someone who is required to hold and does hold an administrator's certificate under subchapter B of chapter 21 of the Education Code and is performing the functions of an administrator, as the term is commonly defined, at the time of his or her evaluation. *Id.*

You contend that Exhibit C consists of confidential evaluations of a former district administrator. You inform us that the administrator to whom the information at issue relates was a certified administrator at the time the evaluations were prepared. Upon review of the information at issue, we conclude Exhibit C is confidential under section 21.355 of the Education Code and must be withheld under section 552.101 of the Government Code on that basis.

You state Exhibit D is confidential under section 552.101 of the Government Code in conjunction with section 1324a of title 8 of the United States Code, which provides that an Employment Eligibility Verification Form I-9 and "any information contained in or appended to such form, may not be used for purposes other than for enforcement of this chapter" and for enforcement of other federal statutes governing crime and criminal investigations. *See* 8 U.S.C. § 1324a(b)(5); *see also* 8 C.F.R. § 274a.2(b)(4). Exhibit D consists of an I-9 form. Based on our review, we find the district must withhold Exhibit D under 552.101 of the Government Code in conjunction with section 1324a of title 8 of the United States Code.

Section 552.101 of the Government Code also encompasses section 6103(a) of title 26 of the United States Code. Section 6103(a) renders tax return information confidential. Attorney General Opinion H-1274 (1978) (tax returns); Open Records Decision No. 600 (1992) (W-4 forms). Section 6103(b) defines the term "return information" as "a taxpayer's identity, the nature, source, or amount of his income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax withheld, deficiencies, overassessments, or tax payments . . . or any other data, received by, recorded by, prepared by, furnished to, or collected by the Secretary [of the Internal Revenue Service] with respect to a return or with respect to the determination of the existence, or possible existence, of liability . . . for any tax, penalty, interest, fine, forfeiture, or other imposition, or offense[.]" *See* 26 U.S.C.

§ 6103(b)(2)(A). Federal courts have construed the term “return information” expansively to include any information gathered by the Internal Revenue Service regarding a taxpayer’s liability under title 26 of the United States Code. *See Mallas v. Kolak*, 721 F. Supp. 748, 754 (M.D.N.C. 1989), *dismissed in part, aff’d in part, vacated in part, and remanded*, 993 F.2d 1111 (4th Cir. 1993). Accordingly, the district must withhold the W-4 form in Exhibit E pursuant to section 552.101 of the Government Code in conjunction with section 6103(a) of title 26 of the United States Code.

Section 552.101 of the Government Code also encompasses the Medical Practices Act (the “MPA”). Occ. Code §§ 151.001-165.160. 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.

Id. § 159.002(b)-(c). Information subject to the MPA includes both medical records and information obtained from those medical records. *See Open Records Decision No. 598* (1991). 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 Nos. 487* (1987), *370* (1983), *343* (1982). The medical record submitted as Exhibit F may only be released in accordance with the MPA. *See ORD 598*.

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 former employee’s name, courses taken, and degree obtained, the district must withhold the submitted transcripts in Exhibit G pursuant to section 552.102(b) of the Government Code.

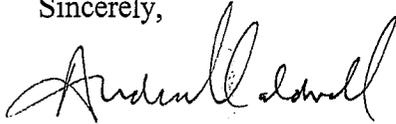
In summary, the district must withhold (1) Exhibit C under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code; (2) Exhibit D under 552.101 of the Government Code in conjunction with section 1324a of title 8 of the United States Code; and (3) Exhibit E under section 552.101 in conjunction with

section 6103(a) of title 26 of the United States Code.² The district may only release the information in Exhibit F in accordance with the MPA. With the exception of the former employee's name, courses taken, and degree obtained, the district must withhold the submitted transcripts in Exhibit G pursuant to section 552.102(b) of the Government Code. 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, 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# 400464

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²We note 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 a Form I-9 under section 552.101 of the Government Code in conjunction with section 1324a of title 8 of the United States Code and a W-4 form under section 552.101 of the Government Code in conjunction with 6103(a) of title 26 of the United States Code, without the necessity of requesting an attorney general decision.