



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 19, 2010

Mr. Eric G. Rodriguez
Walsh, Anderson, Brown, Gallegos and Green, P.C.
For Raymondville Independent School District
103 East Price Road, Suite A
Brownsville, Texas 78521

OR2010-17559

Dear Mr. Rodriguez:

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# 400688.

The Raymondville Independent School District (the "district") received a request for the complete employee file for two named employees. You state you have released some of the responsive records to the requestor. 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.

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. You claim the information in Exhibit D is subject to the Family Medical Leave Act (the "FMLA"), section 2654 of title 29 of the United States Code, which is encompassed by section 552.101 of the Government Code. Section 825.500 of chapter V of title 29 of the Code of Federal Regulations identifies the record-keeping requirements for employers that are subject to the FMLA. Subsection (g) of section 825.500 states

(g) Records and documents relating to medical certifications, recertifications or medical histories of employees or employees' family members, created for purposes of FMLA, shall be maintained as confidential medical records in separate files/records from the usual personnel files, and if the ADA . . . is also applicable, such records shall be maintained in conformance with ADA confidentiality requirements . . . , except that:

(1) Supervisors and managers may be informed regarding necessary restrictions on the work or duties of an employee and necessary accommodations;

(2) First aid and safety personnel may be informed (when appropriate) if the employee's physical or medical condition might require emergency treatment; and

(3) Government officials investigating compliance with FMLA (or other pertinent law) shall be provided relevant information upon request.

29 C.F.R. § 825.500(g). You state Exhibit D consists of leave records, which "indicate a public school employee's reasons for leave under the FMLA and are records that are maintained by the [d]istrict under the FMLA." However, upon review of Exhibit D, we find that you have failed to demonstrate that any of it constitutes medical certifications, recertifications, or medical histories of employees for purposes of the FMLA. Consequently, no portion of the submitted information may be withheld pursuant to section 552.101 of the Government Code based on the FMLA.

You argue the information in Exhibit A is excepted under section 21.355 of the Education Code, which is also encompassed by section 552.101 of the Government 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 decision, we concluded a "teacher" for purposes of section 21.355 means a person who (1) is required to and does in fact hold a certificate or permit required under chapter 21 of the Education Code and (2) is teaching at the time of his or her evaluation. *Id.* We further determined that "teacher interns, teacher trainees, librarians, educational aids and counselors cannot be teachers or administrators for purposes of section 21.355." *Id.* at 5.

You contend the information in Exhibit A is confidential under section 21.355 of the Education Code. You state this information consists of evaluations of the two district employees whose information is at issue. You indicate the district employees whose information is at issue were teaching at the time of the submitted evaluations. Upon review,

we agree some of the submitted documents in Exhibit A are evaluations of these employees' performance as teachers. Thus, this information, which we have marked, must be withheld under section 552.101 in conjunction with section 21.355. However, some of the remaining information in Exhibit A consists of evaluations of one of the employees during her service as a counselor. As stated above, this office has determined that counselors are not teachers or administrators for purposes of section 21.355. *See* ORD 643 at 5. Furthermore, the remaining records consist of self-evaluation forms completed by this employee, regarding her performance as a counselor for the district. We conclude these documents do not evaluate this employee for purposes of section 21.355 and, therefore, they may not be withheld under section 552.101 of the Government Code on that basis.

You raise section 21.048 of the Education Code for the information in Exhibit B. Section 552.101 of the Government Code 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 B consists of ExCET exam results for the named individuals. You state subsection 21.048(c-1)(1) is not applicable in this instance. You further assert the educators have not failed the examination more than five times. Thus, we agree Exhibit B 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 individuals' university transcripts submitted in Exhibit C. 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). Thus, with the exception of the name, courses taken, and degree obtained, the district must withhold the transcripts submitted in Exhibit C under section 552.102(b) of the Government Code.

Section 552.117(a)(1) excepts from disclosure the home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential

under section 552.024 of the Government Code.¹ *See* Gov't Code §§ 552.117(a)(1), .024. 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 a former or current employee who has made a request for confidentiality under section 552.024 prior to the date on which the request for information was made. In this instance, we have marked the information that is generally subject to section 552.117. You do not inform this office whether the individual whose information we have marked elected to keep her personal information confidential before the district received the present request for information. Therefore, we must rule conditionally. If the individual whose personal information we have marked timely elected to withhold such information under section 552.024, the marked information must be withheld under section 552.117(a)(1). If the individual at issue did not timely elect confidentiality, the marked information may not be withheld under section 552.117(a)(1).²

In summary, the district must withhold the information we have marked in Exhibit A under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code. The district must withhold the information in Exhibit B 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, the district must withhold the information in Exhibit C under section 552.102(b) of the Government Code. To the extent the individual timely elected to restrict access to her personal information, the district must withhold the information we have marked in Exhibit A under section 552.117(a)(1) 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

¹The 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).

²Regardless of the applicability of section 552.117, 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(b).

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 'VB', followed by a long horizontal line extending to the right.

Vanessa Burgess
Assistant Attorney General
Open Records Division

VB/dls

Ref: ID# 400688

Enc. Submitted documents

c: Requestor
(w/o enclosures)