



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 6, 2011

Mr. Roger D. Hepworth
Counsel for the Thrall Independent School District
The Fowler Law Firm, PC
919 Congress Avenue, Suite 900
Austin, Texas 78701

OR2011-09563

Dear Mr. Hepworth:

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# 424695.

The Thrall Independent School District (the "district"), which you represent, received a request for four specified categories of information, including the personnel file of a named administrator. You state the district has released some of the requested information to the requestor, but 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.

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. Section 21.355(a) of the Education Code provides, "A document evaluating the performance of a teacher or administrator is confidential." Educ. Code § 21.355(a). 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, a certificate required under chapter 21 of the Education Code and is administering at the time of the administrator's evaluation. *Id.* In addition, the Third Court of Appeals has concluded a written reprimand constitutes an evaluation for purposes of section 21.355 because "it reflects the principal's judgment regarding [a

teacher's] actions, gives corrective direction, and provides for further review." *North East Indep. Sch. Dist. v. Abbott*, 212 S.W.3d 364 (Tex. App.—Austin 2006, no pet.).

On review, we agree that a portion of Exhibit C consists of evaluations of an administrator. Thus, provided the administrator was required to hold and did hold the appropriate certificate and was an administrator at the time of the submitted evaluations, we find the district must withhold the information we have marked under section 552.101 in conjunction with section 21.355 of the Education Code. However, we find you have failed to demonstrate how any of the submitted Commissioner-Recommended Student Performance Domain Worksheets consists of a document evaluating the performance of a teacher or administrator as contemplated by section 21.355. Therefore, we conclude you have not established the remaining information in Exhibit C is confidential under section 21.355, and the district may not withhold it under section 552.101 on that ground.

Section 552.101 also encompasses the doctrine of common-law privacy, which protects information that (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). The types of information considered intimate or embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. This office has found some kinds of medical information or information indicating disabilities or specific illnesses are excepted from required disclosure under 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). Some of the information in Exhibit E is highly intimate or embarrassing and is not of legitimate concern to the public; therefore, the district must withhold this information, which we have marked, under section 552.101 in conjunction with common-law privacy.

You assert portions of Exhibit D, which consists of the administrator's transcripts, 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). Thus, with the exception of the administrator's name, courses taken, and degree obtained, the district must withhold the information in Exhibit D under section 552.102(b) of the Government Code.

We note section 552.117 of the Government Code may be applicable to some of the information in Exhibit E.¹ Section 552.117 excepts from disclosure the home addresses and telephone numbers, emergency contact information, 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. Act of May 24, 2011, 82nd Leg., R.S., S.B. 1638, § 2 (to be codified as an amendment to Gov't Code § 552.117(a)). 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). Therefore, the district may only withhold information under section 552.117(a)(1) on behalf of current or former officials or employees who made a request for confidentiality under section 552.024 of the Government Code prior to the date on which the request for this information was made. If the administrator whose information is at issue timely elected to keep his personal information confidential, the school district must withhold the administrator's home addresses and telephone numbers, emergency contact information, social security number, and any information that reveals whether the administrator has family members. The district may not withhold this information under section 552.117 if the administrator did not make a timely election to keep the information confidential. We have marked the information in Exhibit E that the district must withhold if section 552.117(a)(1) applies.²

To conclude, the district must withhold the following: (1) the evaluations we have marked in Exhibit C under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code if the administrator was required to hold and did hold the appropriate certificate and was an administrator at the time of the submitted evaluations; (2) the information we have marked in Exhibit E under section 552.101 of the Government Code in conjunction with common-law privacy; (3) with the exception of the administrator's name, courses taken, and degree obtained, the information in Exhibit D under section 552.102(b) of the Government Code; and (4) the information we have marked in Exhibit E under section 552.117(a)(1) of the Government Code if the administrator made a request for confidentiality under section 552.024 of the Government Code prior to the date on which the request for this information was made. The district must release the remaining information.

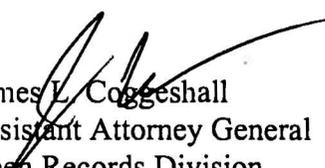
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

¹The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body. *See* Open Records Decision Nos. 481 at 2 (1987), 480 at 5 (1987); *see, e.g.*, Open Records Decision No. 470 at 2 (1987) (because release of confidential information could impair rights of third parties and because improper release constitutes a misdemeanor, attorney general will raise predecessor statute of section 552.101 on behalf of governmental bodies).

²As our ruling is dispositive, we do not address your other argument to withhold this information.

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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/eb

Ref: ID# 424695

Enc. Submitted documents

c: Requestor
(w/o enclosures)