



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 2, 2012

Mr. John M. Hardy
~~Counsel for Van Independent School District~~
Hardy & Atherton
2080 Three Lakes Parkway
Tyler, Texas 75703

OR2012-17568

Dear Mr. Hardy:

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# 469786.

The Van Independent School District (the "district"), which you represent, received a request for the name, address, and phone number of the attorney for the district; three categories of information pertaining to a named student; forms used when a student is accused of violating school policy; the appeals procedures for policy violations; and the personnel file of and any complaints against a named employee. You state the district has released some of the requested information. You claim the submitted information is excepted from disclosure under sections 552.101, 552.114, and 552.117 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the requestor has excluded from his request any information regarding the named employee's social security number, state identification number, home addresses, and home telephone numbers. Thus, these types of information are not responsive to the request

¹Although you raise section 552.024 of the Government Code as an exception to disclosure, this section is not an exception to public disclosure under the Act. Rather, this section permits a current or former official or employee of a governmental body to choose whether to allow public access to certain personal information relating to the official or employee that is held by the employing governmental body. See Gov't Code § 552.024.

regarding the named employee. The district need not release nonresponsive information in response to this request, and this ruling will not address that information.

Next, we note the United States Department of Education Family Policy Compliance Office (the "DOE") has informed this office the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code, 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.² Consequently, state and local educational authorities that receive a request for education records from a member of the public under the Act must not submit education records to this office in unredacted form, that is, in a form in which "personally identifiable information" is disclosed. See 34 C.F.R. § 99.3 (defining "personally identifiable information"). You state portions of the responsive information consist of student identifying education records that are protected under FERPA. Because our office is prohibited from reviewing these records to determine whether appropriate redactions under FERPA have been made, we will not address the applicability of FERPA to the requested documents. See 20 U.S.C. § 1232g(a)(1)(A). Such determinations under FERPA must be made by the educational authority in possession of such records. Likewise, we do not address your arguments under section 552.114 of the Government Code. See Gov't Code §§ 552.026 (incorporating FERPA into the Act), .114 (excepting from disclosure "student records"); Open Records Decision No. 539 (1990) (determining the same analysis applies under section 552.114 and FERPA). However, we will consider your arguments against disclosure of 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 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(a). 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 an "administrator" for purposes of 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 as an administrator, as that term is commonly defined, at the time of the evaluation. *Id.*

You seek to withhold the information contained in Exhibit 2 under section 21.355. You state the named employee is the district's athletic director and holds an administrator's certificate under subchapter B of chapter 21 of the Education Code. We understand the named employee administers the district-wide athletic program and was evaluated in the information

²A copy of this letter may be found on the Office of the Attorney General's website: <http://www.oag.state.tx.us/open/20060725usdoe.pdf>.

at issue as an administrator when the evaluative documents were created. Based on your representations and our review of the information at issue, we find the information we have marked must be withheld under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code. However, the remaining information consists of two lists of goals for the district's athletic program. We find you have failed to demonstrate how this information constitutes an evaluation of the performance of a teacher or an administrator for the purposes of section 21.355 of the Education Code. Accordingly, the district may not withhold any of the remaining information in Exhibit 2 under section 552.101 of the Government Code on the basis of section 21.355.

Section 552.117(a)(1) of the Government Code excepts from disclosure the home addresses and telephone numbers, social security numbers, emergency contact information, and family member information of current or former officials or employees of a governmental body who request this information be kept confidential under section 552.024 of the Government Code. *See Gov't Code § 552.117(a)*. We note section 552.117 is also applicable to personal cellular telephone numbers, provided the cellular telephone service is not paid for by a governmental body. *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 piece of information is protected by section 552.117(a)(1) must be determined at the time the request for it is made. *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 the information. You inform us the employee at issue timely elected confidentiality under section 552.024. Therefore, the district must withhold the information we have marked under section 552.117(a)(1) of the Government Code; however, the marked cellular telephone number may only be withheld under section 552.117(a)(1) if the related cellular telephone service is not paid for by a governmental body.

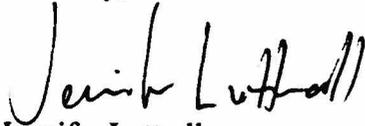
In summary, the district must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code. The district must withhold the information we have marked under section 552.117(a)(1) of the Government Code; however, the marked cellular telephone number may only be withheld under section 552.117(a)(1) if the related cellular telephone service is not paid for by a governmental body. 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,



Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/som

Ref: ID# 469786

Enc. Submitted documents

c: Requestor
(w/o enclosures)