



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 19, 2014

Mr. Robert Vina, III
Counsel for the Rio Hondo Independent School District
Walsh, Anderson, Gallegos, Green and Trevino, P.C.
105 East 3rd Street
Weslaco, Texas 78596

OR2014-14575

Dear Mr. Vina:

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# 533165.

The Rio Hondo Independent School District (the "district"), which you represent, received a request for (1) specified test results and passing percentages; (2) specified correspondence; (3) the new police chief's employment application, salary, and all documents subject to the Open Meetings Act pertaining to him; (4) any document used to rate candidates for police chief; (5) and any information concerning any lawsuits involving the superintendent.¹ The district states it does not have information responsive to some of the request.² The district states it has withheld information pursuant to the Family Educational Rights and Privacy Act

¹We understand the district sought and received clarification of the information requested. *See* Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); *see also City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or over-broad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

²The 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).

("FERPA"), 20 U.S.C. § 1232g.³ The district claims some of the information at issue is excepted from disclosure under sections 552.101, 552.102, 552.103, 552.111, 552.117, and 552.137 of the Government Code.⁴ The district released some of the requested information with certain redactions, some of which were made under section 552.024(c)(2) of the Government Code. *See* Gov't Code §§ 552.024, .117. Since that time, the requestor has asked this office to review the information at issue to determine if the redactions are proper. *See id.* § 552.024(c-1). We have considered the arguments and reviewed the information at issue.

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 of the Government Code encompasses section 21.355 of the Education Code. Section 21.355(a) 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). We have determined that "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 of an administrator, as that term is commonly defined, at the time of the evaluation. *Id.*

The district contends a portion of the information at issue consists of a document that evaluates the performance of a certified administrator. We understand the administrator at issue was acting in her capacity as an administrator when the evaluative document was created. Upon review, we conclude 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.⁵

Section 552.117 of the Government Code provides in relevant part:

³The United States Department of Education Family Policy Compliance Office (the "DOE") has informed this office FERPA does not permit state and local educational authorities to disclose to this office, without parental or an adult student's 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 FERPA determinations must be made by the educational authority in possession of the educational records. We have posted a copy of the letter from the DOE on the Attorney General's website at <http://www.oag.state.tx.us/open/20060725usdoe.pdf>.

⁴Although you raise section 552.1175, we note section 552.117 is the correct exception to raise for information the district holds in its capacity as employer.

⁵As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

(a) Information is excepted from the requirements of Section 552.021 if it is information that relates to the home address, home telephone number, emergency contact information, or social security number of the following person or that reveals whether the person has family members:

(1) a current or former official or employee of a governmental body, except as otherwise provided by Section 552.024;

(2) a peace officer as defined by Article 2.12, Code of Criminal Procedure . . . regardless of whether the officer complies with Section 552.024 or 552.1175, as applicable[.]

Gov't Code § 552.117(a)(1)-(2).⁶ 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). We further note a post office box number is not a "home address" for purposes of section 552.117(a). *See* Open Records Decision No. 622 at 4 (1994) (legislative history makes clear that purpose of Gov't Code § 552.117 is to protect public employees from being harassed at home). The employee at issue is a licensed peace officer. Accordingly, we find the district must withhold the information we have marked under section 552.117(a)(2) of the Government Code. However, the district may not withhold the cellular telephone number at issue under section 552.117(a)(2) if a governmental body pays for the cellular telephone service. Further, we find the remaining information the district has marked is not subject to section 552.117(a)(1) or (a)(2); and the district may not withhold it on either of these bases.

Section 552.137 of the Government Code 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). *See* Gov't Code § 552.137(a)-(c). Upon review, we find the district must withhold the e-mail address we have marked under section 552.137 of the Government Code, unless the owner affirmatively consents to its public disclosure.

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 information we have marked under section 552.117(a)(2) of the Government Code, and the e-mail address we have marked under section 552.137 of the Government Code, unless the owner affirmatively consents to its public disclosure. The district must release the remaining information.

⁶Section 552.117(a)(2) adopts the definition of peace officer found in article 2.12 of the Code of Criminal Procedure.

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



David L. Wheelus
Assistant Attorney General
Open Records Division

DLW/bhf

Ref: ID# 533165

Enc. Submitted documents

c: Requestor
(w/o enclosures)