



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

February 18, 2016

Ms. Lauren Wood  
Counsel for Frisco Independent School District  
Abernathy Roeder Boyd & Hullett P.C.  
P.O. Box 1210  
McKinney, Texas 75070-1210

OR2016-03905

Dear Ms. Wood:

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# 598728.

The Frisco Independent School District (the "district"), which you represent, received two requests from different requestors for information related to complaints against a named individual, with the second requestor specifying a date range.<sup>1</sup> You state the district is redacting some information pursuant to the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232g.<sup>2</sup> You claim the submitted information is excepted from

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<sup>1</sup>You state the district sought and received clarification of the second request for information. *See* Gov't Code § 552.222(b) (stating if information requested is unclear to governmental body or if large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used); *City of Dallas v. Abbott*, 304 S.W.3d 380 (Tex. 2010) (holding when governmental entity, acting in good faith, requests clarification of unclear or overbroad request for public information, ten-business-day period to request attorney general opinion is measured from date request is clarified or narrowed).

<sup>2</sup>The 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 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 education records. We have posted a copy of the letter from the DOE to this office on the Attorney General's website: <http://www.oag.state.tx.us/open/20060725usdoe.pdf>.

disclosure under section 552.101 of the Government Code. Additionally, you state you have notified a third party of the request. *See* Gov't Code § 552.304 (interested third party may submit comments stating why information should or should not be released). We have considered the exception you claim and reviewed the submitted information, a portion of which is a representative sample.<sup>3</sup>

Initially, we note the request received from the first requestor is narrower than the request received from the second requestor. Thus, the district need not release information to the first requestor that is not responsive to his request for information.

Next, we note some of the information submitted in response to the second request is not responsive to this request for information because it falls outside of the specified date range. This ruling does not address the public availability of the non-responsive information, which we have marked, and that information need not be released in response to the second request.

Section 552.101 of the Government Code exempts 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, which provides that “[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, we concluded that a teacher is someone who is required to hold and does hold a certificate or permit required under chapter 21 of the Education Code and is teaching at the time of his or her evaluation. *Id.*

You claim the information at issue constitutes an evaluation of a teacher that is confidential under section 21.355 of the Education Code. You state the individual at issue held the appropriate certificate at the time of the evaluation. However, upon review, we find the information at issue pertains to the employee at issue in his capacity as a coach. Thus, we find you have failed to demonstrate any of the information at issue constitutes an evaluation of the performance of a teacher for the purposes of section 21.355 of the Education Code. *See* Educ. Code § 21.353 (teachers shall be appraised only on basis of classroom teaching performance and not in connection with extracurricular activities). Therefore, the district may not withhold the responsive information under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code.

The district also raises section 552.101 of the Government Code in conjunction with common-law privacy and the holding in *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.—El

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<sup>3</sup>We assume the “representative sample” of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Paso 1992, writ denied). Section 552.101 also encompasses the doctrine of common-law privacy, which protects information if it (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). To demonstrate the applicability of common-law privacy, both prongs of this test must be established. *Id.* at 681-82. In *Ellen*, the court addressed the applicability of the common-law privacy doctrine to files of an investigation of allegations of sexual harassment. We note, however, the ruling in *Ellen* was applicable to investigations involving workplace harassment. Upon review, we find the responsive information does not constitute a sexual harassment investigation in the employment context of the district for purposes of *Ellen*. Accordingly, we conclude the ruling in *Ellen* is not applicable in this situation, and the district may not withhold any portion of the responsive information at issue under section 552.101 of the Government Code on that basis.

Section 552.117(a)(1) of the Government Code applies to records a governmental body holds in an employment capacity and 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 of the Government Code, except as provided by section 552.024(a-1).<sup>4</sup> Gov't Code §§ 552.117(a)(1), .024. 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) (statutory predecessor to section 552.117 of the Government Code not applicable to cellular telephone numbers provided and 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). Therefore, a governmental body must withhold information under section 552.117 on behalf of a current or former official or employee only if the individual made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. Accordingly, if the individual whose information is at issue timely requested confidentiality pursuant to section 552.024, the district must withhold the cellular telephone number we have marked under section 552.117(a)(1) if the cellular telephone service is not paid for by a governmental body. The district may not withhold this information under section 552.117 if the employee did not make a timely election to keep the information confidential.

In summary, if the individual whose information is at issue timely requested confidentiality pursuant to section 552.024 of the Government Code and the cellular telephone service is not paid for by a governmental body, the district must withhold the information we have marked under section 552.117(a)(1) of the Government Code. The district must release the

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<sup>4</sup>The 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).

remaining responsive information; however, the district need not release information to the first requestor that is not responsive to his request for information.<sup>5</sup>

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](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,



Mili Gosar  
Assistant Attorney General  
Open Records Division

MG/akg

Ref: ID# 598728

Enc. Submitted documents

c: 2 Requestors  
(w/o enclosures)

Third Party  
(w/o enclosures)

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<sup>5</sup>We note the second requestor has a right of access to her own personal e-mail address in the information that is being released. *See* Gov't Code § 552.137(b) (personal e-mail address of member of public may be disclosed if owner of address affirmatively consents to its disclosure). We also note this office issued Open Records Decision No. 684 (2009) as a previous determination to all governmental bodies authorizing them to withhold certain categories of information without the necessity of requesting an attorney general decision, including an e-mail address of a member of the public under section 552.137 of the Government Code. Thus, if the district receives another request for this same information from a person who does not have such a right of access, Open Records Decision No. 684 authorizes the district to redact this requestor's personal e-mail address without again seeking a ruling from this office. *See* ORD 684.