



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

July 8, 2009

Ms. Ylise Janssen
Senior School Law Attorney
Austin Independent School District
Office of the General Counsel
1111 West Sixth Street A240
Austin, Texas 78703

OR2009-09389

Dear Ms. Janssen:

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# 349833.

The Austin Independent School District (the "district") received a request for (1) the personnel records of two named teachers, (2) internal e-mails regarding a named individual by one of the named teachers, (3) e-mails sent externally by one of the named teachers, and (4) information regarding nine district policies. The district states it released all of the requested information except for a portion of the teachers' personnel records. The district claims the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.117, and 552.130 of the Government Code. The district states it redacted social security numbers pursuant to section 552.147 of the Government Code.¹ We have considered the exceptions the district claims and reviewed the submitted information.

The district asserts Exhibit B is confidential under section 552.101 of the Government Code. Section 552.101 excepts from disclosure "information considered to be confidential by law,

¹We note 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). Because section 552.147 is dispositive, we do not address the district's section 552.117 assertion.

either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. This exception encompasses information that other statutes make confidential. Exhibit B consists of two Employment Eligibility Verification Form I-9s and attached social security cards and Texas driver’s licenses. Section 1324a of title 8 of the United States Code provides an I-9 form “may not be used for purposes other than for enforcement of this chapter” and for enforcement of other federal statutes governing crime and criminal investigations. 8 U.S.C. § 1324a(b)(5). Release of these documents under the Act would be “for purposes other than for enforcement” of the referenced federal statute. Accordingly, we conclude Exhibit B is confidential for purposes of section 552.101 of the Government Code and may only be released in compliance with the federal laws and regulations governing the employment verification system.²

Next, the district asserts the evaluations in Exhibit C are confidential under section 21.355 of the Education Code, which 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 Open Records Decision No. 643, we determined that a “teacher” for purposes of section 21.355 means a person who (1) is required to and does in fact hold a teaching certificate under subchapter B of chapter 21 of the Education Code or a school district teaching permit under section 21.055 and (2) is engaged in the process of teaching, as that term is commonly defined, at the time of the evaluation. *See id.* at 4. The district states Exhibit C consists of evaluations of teachers who held the appropriate teaching certificates engaged in the process of teaching at the time of the evaluations. Based on the district’s representations and our review, we conclude Exhibit C is confidential under section 21.355 of the Education Code and the district must withhold Exhibit C under section 552.101 of the Government Code.

Next, the district states the benefit election forms in Exhibit E are subject to common-law privacy. Section 552.101 of the Government Code 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.2d688, 685 (Tex.1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be demonstrated. *Id.* at 681-82. This office has found personal financial information not relating to the financial transaction between an individual and a governmental body is excepted from disclosure under common-law privacy. *See* Open Records Decision No. 600 (1992) (designation of beneficiary of employee’s retirement benefits and optional insurance coverage; choice of particular insurance carrier; direct deposit authorization; and forms allowing employee to allocate pretax compensation to group insurance, health care, or dependent care). However, there is a legitimate public interest in

²As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

the essential facts about a financial transaction between an individual and a governmental body. *See id.* at 9 (information revealing that employee participates in group insurance plan funded partly or wholly by governmental body is not excepted from disclosure); *see also* Open Decision Nos. 545 (1990) (financial information pertaining to receipt of funds from governmental body or debts owed to governmental body not protected by common law privacy), 523 (1989). Therefore, the district must withhold the personal, financial information regarding an optional plan we have marked in Exhibit E under section 552.101 of the Government Code in conjunction with common-law privacy.

Next, the district claims portions of Exhibit D, which consists of the named former teachers' college transcripts, are excepted under section 552.102(b). This section excepts from disclosure all information in a transcript of a professional public school employee 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). The district asks whether it must release information from the transcripts themselves when the degrees obtained and the courses taken are already disclosed in the teachers' applications, which have already been provided to the requestor. The Act "does not permit a governmental body to provide a requestor with a new document on which only the disclosable requested information has been consolidated and retyped." Open Records Decision No. 606 at 3 (1992). Instead, a governmental body must "release a copy of an actual requested record, with any confidential or nondisclosable information excised." *Id.*; *see also* Gov't Code § 552.228 (governmental body must provide "suitable copy" of public information); Open Records Decision No. 633 (1995) (agency does not comply with Act by releasing to requestor another record as substitute for specifically requested record unless requestor agrees to substitution). The district does not inform us the requestor has agreed to such a substitution. Thus, release of the teachers' applications is not sufficient to comply with the Act. Accordingly, the district must withhold the transcripts in Exhibit D pursuant to section 552.102(b) of the Government Code but release the employees' names, courses taken, and degrees obtained.

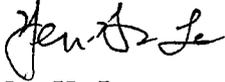
In summary, the district must withhold (1) Exhibit B under section 552.101 of the Government Code in conjunction with section 1324a of title 8 of the United States Code, (2) Exhibit C under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code, (3) the information we have marked in Exhibit E under section 552.101 in conjunction with common-law privacy, and (4) the submitted transcripts in Exhibit D, except for the employees' names, courses taken, and degrees obtained, under section 552.102(b) 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 information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/rl

Ref: ID# 349833

Enc. Marked documents

c: Requestor
(w/o enclosures)