ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 23, 2009

Ms. Christine Badillo
Walsh, Anderson, Brown, Aldridge & Gallegos, P.C.
Attorneys for Leander Independent School District
P.O. Box 2156
Austin, Texas 78768

OR2009-15192

Dear Ms. Badillo:

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# 359510.

The Leander Independent School District (the "district"), which you represent, received a request for (1) the list of district personnel that have been involved with a specified student, (2) a "List of Types and Locations" for special education records, (3) the credentials of nine named individuals, and (4) a list of all district personnel that are "SAMA trained."[1] You state information responsive to items one and two of the request has been released. We note you have redacted information subject to section 552.147 of the Government Code.[2] You claim portions of the submitted information are excepted from disclosure under sections 552.101, 552.102, 552.130, and 552.137 of the Government Code. We have

[1]The district sought and received clarification of the information requested. *See* Gov't Code § 552.222 (providing that if request for information is unclear, governmental body may ask requestor to clarify request).

[2]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. *See* Gov't Code § 552.147(b).

considered the exceptions you claim and reviewed the submitted information, part of which is a representative sample.[3]

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. Section 552.101 encompasses information protected by other statutes, such as section 21.355 of the Education Code. Section 21.355 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, this office also concluded that a teacher is someone who is required to hold and does hold a certificate required under chapter 21 of the Education Code and is teaching at the time of his or her evaluation. *Id.* at 4. You assert that portions of the submitted information consist of evaluations subject to section 21.355. You state, and the submitted information reflects, that the individuals at issue each holds a certificate required under chapter 21 of the Education Code. Upon review, we conclude that some of the submitted documents, which we have marked, are evaluations of teachers or administrators made confidential by section 21.355 of the Education Code. Therefore, the district must withhold these documents from disclosure pursuant to section 552.101 of the Government Code. However, you have failed to demonstrate how the remaining information at issue consists of evaluations as contemplated by section 21.355 of the Education Code. Accordingly, the district may not withhold any of the remaining information under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code.

Section 552.101 also encompasses federal law. Exhibit 3 consists of I-9 forms which are governed by section 1324a of title 8 of the United States Code. This section provides that this 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 that Exhibit 3 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.[4]

---

[3]We assume that 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.

[4]As our ruling is dispositive, we need not address your remaining argument against disclosure as it pertains to this information.

You claim a portion of Exhibit 5(A) is excepted from disclosure under section 552.102(a) of the Government Code. Section 552.102(a) excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Gov't Code § 552.102. In *Hubert v. Harte-Hanks Texas Newspapers*, 652 S.W.2d 546 (Tex. App.—Austin 1983, writ ref'd n.r.e.), the court ruled that the test to be applied to information claimed to be protected under section 552.102(a) is the same as the test formulated by the Texas Supreme Court in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), for information claimed to be protected under the doctrine of common-law privacy as incorporated by section 552.101.

For information to be protected from public disclosure by the common-law right of privacy under section 552.101, the information must meet the criteria set out in *Industrial Foundation.* In *Industrial Foundation,* the Texas Supreme Court stated that information is excepted from disclosure if it (1) contains highly intimate or embarrassing facts, the release of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. 540 S.W.2d at 685. The type of information considered intimate and 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. However, there is a legitimate public interest in the qualifications of a public employee and how that employee performs job functions and satisfies employment conditions. *See generally* Open Records Decision Nos. 470 at 4 (1987) (public has legitimate interest in job performance of public employees), 444 (1986) (public has legitimate interest in knowing reasons for dismissal, demotion, promotion, or resignation of public employees), 423 at 2 (1984) (scope of public employee privacy is narrow). The information at issue pertains to the job performance of a former district employee. Therefore, we conclude there is a legitimate public interest in this information. Accordingly, the district may not withhold any of the information at issue under section 552.102(a) of the Government Code.

You claim portions of the remaining information are excepted from disclosure under section 552.102(b) of the Government Code, which excepts from public disclosure "a transcript from an institution of higher education maintained in the personnel file of a professional public school employee[.]" Gov't Code § 552.102(b). This exception further provides, however, that "the degree obtained or the curriculum on a transcript in the personnel file of the employee" are not excepted from disclosure. *Id.*; *see also* Open Records Decision No. 526 (1989). We note that a portion of the information you have marked under this exception does not consist of a transcript from an institution of higher education. Accordingly, you may not withhold this information, which we have marked for release, under section 552.102(b). With the exception of the employee's name, courses taken, and degree obtained, the district must withhold the remaining information in Exhibit 5(B) pursuant to section 552.102(b) of the Government Code.

We note you have redacted certain information subject to section 552.117 of the Government Code. Section 552.117(a)(1) of the Government Code excepts from disclosure the home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body. *See* Gov't Code § 552.117(a)(1). Section 552.024 of the Government Code authorizes a governmental body to withhold information subject to section 552.117 without requesting a decision from this office if the employee or official or former employee or official chooses not to allow public access to the information. *See id.* § 552.024(c). We have marked additional information subject to section 552.117(a)(1). The submitted information indicates that the employee at issue timely elected to keep this information confidential. Therefore, the district must also withhold the additional information we have marked under section 552.117(a)(1) of the Government Code.

You raise section 552.130 of the Government Code for a portion of the remaining information. Section 552.130 excepts from disclosure "information [that] relates to . . . a motor vehicle operator's or driver's license or permit issued by an agency of this state [or] a motor vehicle title or registration issued by an agency of this state[.]" *Id.* § 552.130. We note, however, section 552.130 does not apply to out-of-state driver's license and motor vehicle record information. Accordingly, the district must withhold the information you have marked, except for the out-of-state driver's license number we have marked for release, under section 552.130 of the Government Code.

Section 552.137 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). *Id.* § 552.137(a)-(c). The e-mail addresses you have marked do not appear to be of types specifically excluded by section 552.137(c). Further, you state the district has not received consent for release of any of the e-mail addresses at issue. Therefore, the district must withhold the e-mail addresses you have marked under section 552.137 of the Government Code.

In summary, the district must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code. The I-9 forms in Exhibit 3 are 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. Except for the information marked for release, the district must withhold the information you marked in Exhibit 5(B) under section 552.102(b) of the Government Code. The district must withhold the information we marked under section 552.117(a)(1) of the Government Code. Except for the information marked for release, the district must withhold the information you marked under section 552.130 of the Government Code and the e-mail addresses you marked under section 552.137 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, toll free, at (888) 672-6787.

Sincerely,

Matt Entsminger
Assistant Attorney General
Open Records Division

MRE/dls

Ref: ID# 359510

Enc. Submitted documents

c: Requestor
(w/o enclosures)