



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 7, 2012

Ms. Jennifer M. Engdale  
Powell & Leon L.L.P.  
1706 West Sixth Street  
Austin, Texas 78703

OR2012-06694

Dear Ms. Engdale:

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# 452762.

The Blooming Grove Independent School District (the “district”), which you represent, received a request for the employment records of a named former district employee. You state you have released some of the requested information. You state you have redacted the personal information of a former employee subject to section 552.117 of the Government Code as permitted by section 552.024(c) of the Government Code.<sup>1</sup> You claim portions of the submitted information are excepted from disclosure under sections 552.101 and 552.102 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We note the requestor has specifically excluded social security numbers and driver’s license numbers from his request. Accordingly, any such information is not responsive to the present request for information. This ruling does not address the public availability of any information that is not responsive to the request, and the district need not release such information.

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<sup>1</sup>Section 552.117 of the Government Code 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. Gov’t Code § 552.117(a). 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 current or former employee or official chooses not to allow public access to the information. *See id.* § 552.024(c).

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 of the Government Code encompasses section 21.048 of the Education Code, which addresses teacher certification examinations. Section 21.048(c-1) provides:

The results of an examination administered under this section are confidential and are not subject to disclosure under [the Act] unless:

(1) the disclosure is regarding notification to a parent of the assignment of an uncertified teacher to a classroom as required by Section 21.057; or

(2) the educator has failed the examination more than five times.

Educ. Code § 21.048(c-1). You explain Exhibit 3 contains teacher certification examination results. You inform us subsections 21.048(c-1)(1) and (2) are not applicable. Accordingly, the district must withhold the information you have marked in Exhibit 3 under section 552.101 of the Government Code in conjunction with section 21.048(c-1) of the Education Code.

Section 552.101 of the Government Code also encompasses common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 688, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be established. *Id.* at 681-82. Common-law privacy encompasses the specific types of information held to be intimate or embarrassing in *Industrial Foundation*, which 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. This office has also found some kinds of medical information or information indicating disabilities or specific illnesses are excepted from required public disclosure under common-law privacy. *See* Open Records Decision No. 455 (1987) (information pertaining to prescription drugs, specific illnesses, operations and procedures, and physical disabilities protected from disclosure). We note, however, the public generally has a legitimate interest in information that relates to public employment and public employees. *See* Open Records Decision Nos. 542 (1990), 470 at 4 (1987) (public has legitimate interest in job qualifications and performance of public employees), 444 at 5-6 (1986) (public has legitimate interest in knowing reasons for dismissal, demotion, promotion, or resignation or public employees), 432 at 2 (1984) (scope of public employee privacy is narrow). Upon review, we find the information we marked is highly intimate or embarrassing, and of no legitimate public interest. Therefore, the district must withhold the information we have marked under section 552.101 in conjunction with common-law privacy. However, we find you have failed to demonstrate any portion of the remaining

information is highly intimate or embarrassing. Accordingly, none of the remaining information may be withheld under section 552.101 of the Government Code in conjunction with common-law privacy.

You claim the college transcript submitted in Exhibit 2 are subject to section 552.102(b) of the Government Code, which excepts from disclosure all information in transcripts 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). Thus, with the exception of the employee's name, courses taken, and degree obtained, the district must withhold the transcript in Exhibit 2 under section 552.102(b) of the Government Code.

Section 552.102(a) of the Government Code 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(a). The Texas Supreme Court has held section 552.102(a) excepts from disclosure the dates of birth of state employees in the payroll database of the Texas Comptroller of Public Accounts. *Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex.*, 354 S.W.3d 336 (2010). Having reviewed the information at issue, we agree the date of birth you have marked must be withheld under section 552.102(a) of the Government Code.

We note the remaining information contains an e-mail address subject to section 552.137 of the Government Code.<sup>2</sup> 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). *See* Gov't Code § 552.137(a)-(c). The e-mail address at issue is not excluded by subsection (c). Therefore, the district must withhold the personal e-mail address we have marked under section 552.137 of the Government Code, unless its owner affirmatively consents to its public disclosure.

In summary, the district must withhold: (1) the teacher certification examination results you have marked in Exhibit 3 under section 552.101 of the Government Code in conjunction with section 21.048(c-1) of the Education Code; (2) the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy; (3) the transcripts in Exhibit 2, with the exception of the employee's name, courses taken, and degree obtained, under section 552.102(b) of the Government Code; (4) the date of birth you have marked under section 552.102(a) of the Government Code; and (5) the e-mail address we have marked under section 552.137 of the Government Code, unless the owner of the e-mail address affirmatively consents to its public disclosure. The remaining information must be released.

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<sup>2</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).

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](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,

A handwritten signature in black ink, appearing to read "C Galindo Jr.", written in a cursive style.

Charles Galindo Jr.  
Assistant Attorney General  
Open Records Division

CG/em

Ref: ID# 452762

Enc. Submitted documents

c: Requestor  
(w/o enclosures)