



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 31, 2013

Ms. Ellen H. Spalding
Counsel for Eanes Independent School District
Rogers, Morris & Grover, L.L.P.
5718 Westheimer Road, Suite 1200
Houston, Texas 77057

OR2013-19047

Dear Ms. Spalding:

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# 504188 (EISD Request No. 4213).

The Eanes Independent School District (the "district"), which you represent, received a request for the personnel file of a named employee. We understand the district has redacted certain information under section 552.117(a)(1) of the Government Code pursuant to section 552.024 of the Government Code and a social security number pursuant to section 552.147(b) of the Government Code.¹ You claim the submitted information is excepted from disclosure under sections 552.101 and 552.102 of the Government Code. We

¹Section 552.024 authorizes a governmental body to redact from public release certain personal information of a current or former employee excepted from disclosure under section 552.117(a)(1) without the necessity of requesting a decision from this office under the Act, if the employee timely elected to withhold such information. *See* Gov't Code §§ 552.024(a)-(c), .117(a)(1). *See also* *Id.* § 552.024(a-1) (a school district may not require an employee or former employee of the district to choose whether to allow public access to the employee's or former employee's social security number). 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. *Id.* § 552.147(b).

have considered the exceptions you claim and reviewed the submitted representative sample of information.²

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. This section encompasses information protected by other statutes, such as section 21.048 of the Education Code, which provides, in relevant part, the following:

The results of an examination administered under this section are confidential and are not subject to disclosure under Chapter 552, Government Code, 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). Upon review, we find the information we have marked reflects the results of examinations administered under section 21.048 of the Education Code. You state sections 21.048(c-1)(1) and (2) are not applicable in this instance. Accordingly, the district must withhold the information we have marked under section 552.101 in conjunction with section 21.048(c-1). However, we find no portion of the remaining information at issue consists of the results of examinations administered under section 21.048 of the Education Code, and the district may not withhold any of the remaining information under section 552.101 of the Government Code on that basis.

Section 552.101 of the Government Code also 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 for purposes of section 21.355, the word "teacher" means a person who is required to and does in fact hold a teaching certificate under subchapter B of chapter 21 of the Education Code and who is in the process of teaching, as that term is commonly defined, at the time of the evaluation. *See id.* at 4. We

²This letter ruling assumes that the submitted representative sample of information is truly representative of the requested information as a whole. This ruling does not reach, and therefore does not authorize, the withholding of any other requested information to the extent that the other information is substantially different than that submitted to this office. *See* Gov't Code §§ 552.301(e)(1)(D), .302; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

note section 21.355 does not apply to evaluations relating to an individual's duties as a coach. *See* Educ. Code § 21.353 (teachers shall be appraised only on basis of classroom teaching performance and not in connection with extracurricular activities).

You explain the information you have marked consists of evaluations of a teacher who you state held the appropriate certificate for the purposes of section 21.355 and was acting as a teacher at the time of the evaluations. Upon review, we find some of the information at issue, which we have marked, consist of confidential teacher evaluations under section 21.355 of the Education Code. Accordingly, the district must withhold the information we have marked under section 552.101 in conjunction with section 21.355. However, a portion of the remaining information at issue consists of evaluations of the employee in his capacity as a coach. Further, the remaining information consists of self-evaluation forms that were completed by the named employee or information that does not evaluate the named employee for the purposes of 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 552.102(b) of the Government Code excepts from disclosure higher education transcripts of professional public school employees, but does not except the employee's name, the courses taken, and the degree obtained from disclosure. Gov't Code § 552.102(b); *see also* Open Records Decision No. 526 (1989). Upon review, with the exception of the employee's name, courses taken, and degree obtained, we find the district must withhold the transcripts we have marked under section 552.102(b) of the Government Code.³

In summary, the district must withhold the information we have marked under section 552.101 of the Government Code in conjunction with sections 21.048 and 21.355 of the Education Code. With the exception of the employee's name, courses taken, and degree obtained, we find the district must withhold the transcripts we have marked under section 552.102(b) of the Government Code. The district must release the remaining information.

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/>

³As our ruling is dispositive for this information, we need not address your remaining argument against its disclosure.

[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,



Michael A. Pearle
Assistant Attorney General
Open Records Division

MAP/bhf

Ref: ID# 504188

Enc. Submitted documents

c: Requestor
(w/o enclosures)