



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 10, 2014

Mr. Orlando "Jay" Juarez, Jr.
Counsel for the United Independent School District
J. Cruz & Associates, L.L.C.
216 West Village Boulevard, Suite 202
Laredo, Texas 78041

OR2014-22398

Dear Mr. Juarez:

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# 546464.

The United Independent School District (the "district"), which you represent, received two requests from different requestors for the personnel file of a named employee, excluding any documents previously provided to the requestors by the district.¹ You state the district will withhold some of the submitted information pursuant to section 552.0038(c) of the Government Code.² You claim some of the submitted information is excepted from

¹As you have not submitted a copy of the original request for information, we take our description from your brief. We note the district sought and received clarification of the information requested. *See* Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); *see also City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or over-broad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

²Section 552.0038(c) of the Government Code provides that a governmental entity that maintains records of a participant in a retirement system's retirement program in cooperation with or on behalf of a retirement system is not required to accept or comply with a request for such information or to seek an opinion from the attorney general because the records are exempt from the provisions of the Act. *See* Gov't Code § 552.0038(c).

disclosure under sections 552.101, 552.102, 552.117, and 552.130 of the Government Code.³ We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. Section 552.101 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 that for purposes of section 21.355, “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 or a school district teaching permit under section 21.055 and who is engaged in the process of teaching, as that term is commonly defined, at the time of the evaluation. *See id.* at 4. We also have determined that for purposes of section 21.355, “administrator” means a person who is required to and does in fact hold an administrator’s certificate under subchapter B of chapter 21 of the Education Code and is performing the functions of an administrator, as that term is commonly defined, at the time of the evaluation. *Id.* In addition, the Third Court of Appeals has held a written reprimand constitutes an evaluation for purposes of section 21.355 because “it reflects the principal’s judgment regarding [a teacher’s] actions, gives corrective direction, and provides for further review.” *Abbott v. North East Indep. Sch. Dist.*, 212 S.W.3d 364 (Tex. App.—Austin 2006, no pet.).

You contend the information in Exhibit B consists of evaluations of administrators and teachers that are confidential under section 21.355 of the Education Code. We understand one of the administrators at issue held the appropriate certificate at the time of the creation of the evaluations and was functioning as an administrator at the time of the evaluations. Based on your representations and our review, we conclude some of the information in Exhibit B is confidential under section 21.355 of the Education Code and must be withheld under section 552.101 of the Government Code. However, we find you have failed to demonstrate how any of the remaining information consists of documents evaluating the performance of a teacher or administrator for purposes of section 21.355 of the Education Code. Thus, none of the remaining information, which we have marked for release, may be withheld under section 552.101 of the Government Code on that basis. Accordingly, with the exception of the information we have marked for release, the district must withhold the remaining information in Exhibit B under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code.

³We note the district did not comply with section 552.301 of the Government Code in requesting this decision. *See* Gov’t Code § 552.301(b). Nonetheless, because sections 552.101, 552.102, 552.117, and 552.130 of the Government Code can provide compelling reasons to overcome the presumption of openness, we will address the applicability of these exceptions to the requested information. *See id.* § 552.302.

Section 552.101 of the Government Code also encompasses section 21.048 of the Education Code, which addresses teacher certification examinations. Section 21.048(c-1) provides the following:

(c-1) 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 in Exhibit C reflects the results of examinations administered under section 21.048 of the Education Code. You state subsections 21.048(c-1)(1) and (2) are not applicable in this instance. Accordingly, the district must withhold the information in Exhibit C 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 the doctrine of 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 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. This office has also found personal financial information not relating to the financial transaction between an individual and a governmental body is excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 600 (1992), 545 (1990) (deferred compensation information, participation in voluntary investment program, election of optional insurance coverage, mortgage payments, assets, bills, and credit history). Upon review, we find the information we have marked in Exhibit E satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the district must withhold the information we have marked in Exhibit E under section 552.101 of the Government Code in conjunction with common-law privacy.⁴ However, we find you have not demonstrated how any of the remaining information is highly intimate or embarrassing and not of legitimate public concern. Thus, none of the remaining information may be withheld under section 552.101 in conjunction with common-law privacy.

⁴As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

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 (Tex. 2010). Upon review, we find the district must withhold the date of birth you marked, and the additional instance we have marked, under section 552.102(a) of the Government 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). Accordingly, with the exception of the employee’s name, courses taken, and degrees obtained, the district must withhold the submitted college transcripts in Exhibit D-1 pursuant to section 552.102(b) of the Government Code.

You have redacted certain information protected by section 552.117(a)(1) of the Government Code pursuant to section 552.024(c)(2) of the Government Code.⁵ The remaining information contains additional information subject to section 552.117(a)(1). Section 552.117(a)(1) excepts from disclosure the home address and telephone number, emergency contact information, social security number, and family member information of a current or former employee or official of a governmental body who requests this information be kept confidential under section 552.024 of the Government Code, except as provided by section 552.024(a-1). *See* Gov’t Code §§ 552.117(a)(1), .024. Section 552.024(a-1) of the Government Code provides, “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.” *Id.* § 552.024(a-1). Thus, the district may only withhold under section 552.117 the home address and telephone number, emergency contact information, and family member information of a current or former employee or official of the district who requests this information be kept confidential under section 552.024. Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body’s receipt of the request for the information. *See* Open Records Decision No. 530 at 5 (1989). Thus, information may only be withheld under section 552.117(a)(1) on behalf of a current or former employee who made a request for confidentiality under section 552.024 prior to the date of the governmental body’s receipt of the request for the information. Therefore, if the employee or former employee of the district whose information is at issue timely requested

⁵Section 552.024(c)(2) of the Government Code authorizes a governmental body to redact information protected by section 552.117(a)(1) of the Government Code without the necessity of requesting a decision under the Act if the current or former employee or official to whom the information pertains timely chooses not to allow public access to the information. *See* Gov’t Code § 552.024(c)(2).

confidentiality under section 552.024 of the Government Code, the district must withhold the information you redacted and the information we have marked under section 552.117(a)(1) of the Government Code. Conversely, if the individual whose information is at issue did not timely request confidentiality under section 552.024, the district may not withhold this information under section 552.117(a)(1).

You have redacted some information pursuant to section 552.130(c) of the Government Code.⁶ We note the remaining information contains additional information subject to section 552.130. Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release. *See* Gov't Code § 552.130. Accordingly, the district must withhold the motor vehicle record information you redacted, as well as the information we have marked, under section 552.130 of the Government Code.

In summary, with the exception of the information we have marked for release, the district must withhold the remaining information in Exhibit B under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code. The district must withhold the information in Exhibit C under section 552.101 of the Government Code in conjunction with section 21.048(c-1) of the Education Code. The district must withhold the information we have marked in Exhibit E under section 552.101 of the Government Code in conjunction with common-law privacy. The district must withhold the date of birth you marked, and the additional instance we have marked, under section 552.102(a) of the Government Code. With the exception of the employee's name, courses taken, and degrees obtained, the district must withhold the submitted college transcripts in Exhibit D-1 pursuant to section 552.102(b) of the Government Code. The district must withhold the information you redacted and the information we have marked under section 552.117(a)(1) of the Government Code, if the individual whose information is at issue timely requested confidentiality under section 552.024 of the Government Code. The district must withhold the motor vehicle record information you redacted and the information we have marked under section 552.130 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.

⁶Section 552.130(c) of the Government Code allows a governmental body to redact the information described in subsection 552.130(a) without the necessity of seeking a decision from the attorney general. *See* Gov't Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e).

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, 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,

A handwritten signature in black ink, appearing to read 'Kenny Moreland', written in a cursive style.

Kenny Moreland
Assistant Attorney General
Open Records Division

KJM/som

Ref: ID# 546464

Enc. Submitted documents

c: Requestor
(w/o enclosures)