



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 16, 2014

Mr. Darin Darby
Counsel for the San Antonio Independent School District
Escamilla & Poneck, LLP
700 North St. Mary's Street, Suite 850
San Antonio, Texas 78205

OR2014-22818

Dear Mr. Darby:

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# 548304.

The San Antonio Independent School District (the "district"), which you represent, received a request for the personnel records of a specified district employee. You state you will release some information to the requestor. You state you will redact home addresses and telephone numbers pursuant to section 552.024(c)(2) of the Government Code, motor vehicle record information pursuant to section 552.130(c) of the Government Code, and social security numbers pursuant to 552.147(b) of the Government Code.¹ You claim portions of the submitted information are excepted from disclosure under sections 552.101, 552.102, and 552.137 of the Government Code.² We have considered the exceptions you claim and

¹Section 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). If a governmental body redacts such information, it must notify the requestor in accordance with subsections 552.024(c-1) and (c-2). *See id.* § 552.024(c-1)-(c-2). Section 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 id.* § 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). 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. *Id.* § 552.147(b).

²Although you raise section 552.101 of the Government Code in conjunction with section 552.102 of the Government Code, this office has concluded section 552.101 does not encompass other exceptions found in the Act. *See* Open Records Decision Nos. 676 at 1-2(2002), 575 at 2 (1990).

reviewed the submitted information. We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (permitting interested third party to submit to the attorney general reasons why requested information should or should not be released).

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” *Id.* § 552.101. This section encompasses information protected by other statutes. Section 552.101 encompasses section 21.048 of the Education Code, which addresses educator 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). Upon review, we find the information we have marked reveals the results of teacher certification exams. We have no indication subsections 21.048(c-1)(1) and (2) are applicable in this instance. Accordingly, the district must withhold this information under section 552.101 of the Government Code in conjunction with section 21.048(c-1) of the Education Code. However, we find no portion of the remaining information in Exhibit A 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 1324a of title 8 of the United States Code. Section 1324a governs I-9 forms and their related documents. This section provides an I-9 form and “any information contained in or appended to such 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. *See* 8 U.S.C. § 1324a(b)(5); *see also* 8 C.F.R. § 274a.2(b)(4). Release of the submitted I-9 forms in this instance would be “for purposes other than enforcement” of the referenced federal statutes. Accordingly, we conclude the submitted I-9 forms in Exhibit B are confidential pursuant to section 1324a of title 8 of the United States Code and the district must withhold Exhibit B under section 552.101 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 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 we have marked under section 552.102(a) of the Government Code.

We note some of the remaining information may be subject to section 552.117 of the Government Code.³ Section 552.117(a)(1) of the Government Code 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. *See* Gov't Code § 552.117(a)(1). 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 be withheld under section 552.117(a)(1) only on behalf of a current or former employee or official 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. Information may not be withheld under section 552.117(a)(1) on behalf of a current or former employee or official who did not timely request under section 552.024 the information be kept confidential. Therefore, to the extent the individual at issue timely requested confidentiality under section 552.024 of the Government Code, the district must withhold the information we have marked under section 552.117(a)(1) of the Government Code. Conversely, to the extent the employee at issue did not timely request confidentiality under section 552.024, the district may not withhold the information under section 552.117(a)(1).

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. Gov't Code § 552.130. Upon review, we find the information we have marked consists of motor vehicle record information subject to section 552.130. Therefore, the district must withhold the motor vehicle record information we have marked 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). Section 552.137 is not applicable to an institutional e-mail address, an Internet website address, or an e-mail address that a governmental entity maintains for one of its officials or employees. Upon review, we find none of the submitted information consists of e-mail addresses subject to section 552.137. Accordingly, the district may not withhold any of the remaining information under section 552.137 of the Government Code.

³The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

In summary, the district must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 21.048(c-1) of the Education Code. The district must withhold Exhibit B under section 552.101 in conjunction with section 1324a of title 8 of the United States Code. The district must withhold the birth date we have marked under section 552.102(a) of the Government Code. To the extent the individual whose information is at issue is a current or former district employee who timely requested confidentiality under section 552.024 of the Government Code, the district must withhold the information we have marked under section 552.117(a)(1) of the Government Code. The district must withhold the information we have marked under section 552.130 of the Government Code. The district must release the remaining submitted 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/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,



Abigail T. Adams
Assistant Attorney General
Open Records Division

ATA/ac

Ref: ID# 548304

Enc. Submitted documents

c: Requestor
(w/o enclosures)