



January 26, 2015

Mr. Jaime J. Muñoz
Counsel for the La Joya Independent School District
Law Office of Jaime J. Muñoz
P.O. Box 47
San Juan, Texas 78589

OR2015-01483

Dear Mr. Munoz:

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# 551586.

The La Joya Independent School District (the "district"), which you represent, received a request for (1) the name, job title, and annual salary or hourly wage of all district employees; and (2) the personnel file of a named district employee, including the employee's contract and any contract addendums. You state you have released or will release information responsive to the first category to the requestor. You claim portions of the submitted information are excepted from disclosure under sections 552.101, 552.102, and 552.136 of the Government Code. 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 submitted information contains evaluations of an administrator that are confidential under section 21.355 of the Education Code. You state the administrator at issue held the appropriate certificate at the time of the creation of the evaluations and was functioning as an administrator or teacher at the time of the evaluations. Based on your representations and our review, we find the district must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 21.355 of the Education 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 may be withheld under section 552.101 of the Government Code on that basis.

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. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). This office has also found personal financial information not relating to a financial transaction between an individual and a governmental body is generally excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 600 (1992) (finding personal financial information to include designation of beneficiary of employee’s retirement benefits and optional insurance coverage; choice of particular insurance carrier; direct deposit authorization; and forms allowing employee to allocate pretax compensation to group insurance, health care, or dependent care), 545 (deferred compensation information, participation in voluntary investment program, election of optional insurance coverage, mortgage payments, assets, bills, and credit history). 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, 444 at 5-6 (1986), 432 at 2 (1984). Upon review, we find the information we have marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the district must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

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 transcript pursuant to section 552.102(b) of the Government Code.

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).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. We note a post office box number is not a "home address" for purposes of section 552.117(a). *See* Open Records Decision No. 622 at 4 (1994) (legislative history makes clear that purpose of Gov't Code § 552.117 is to protect public employees from being harassed at home). 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 individuals whose information is 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, if the individuals 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).

¹The 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).

Section 552.136 of the Government Code provides, “[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” Gov’t Code § 552.136(b); *see id.* § 552.136(a) (defining “access device”). Upon review, the district must withhold the bank account and routing number we have marked under section 552.136 of the Government Code. However, we find the district has failed to demonstrate how section 552.136 is applicable to any of the remaining information at issue. Accordingly, the district may not withhold any of the remaining information under section 552.136.

Section 552.147(a-1) of the Government Code provides, “The social security number of an employee of a school district in the custody of the district is confidential.” *Id.* § 552.147(a-1). The Eighty-third Texas Legislature amended section 552.147 to make the social security numbers of school district employees confidential, without such employees being required to first make a confidentiality election under section 552.024 of the Government Code. *See 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). The legislative history of sections 552.024 (a-1) and 552.147(a-1) reflects that the protection afforded by section 552.147(a-1) was intended to extend to both current and former school district employees. *See* House Comm. on Gov’t Efficiency and Reform, Bill Analysis, Tex. H.B. 2961, 83rd Leg., R.S. (2013) (“H.B. 2961 seeks to protect the social security number of a school district employee or former employee from public disclosure.”). Thus, when reading sections 552.024(a-1) and 552.147(a-1) together, and upon review of the legislative history of these two amendments, we conclude that section 552.147(a-1) makes confidential the social security numbers of both current and former school district employees. Accordingly, the district must withhold the social security number of the district employee we have marked under section 552.147(a-1) of the Government Code.

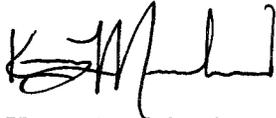
In summary, the district must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code. The district must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. With the exception of the employee’s name, courses taken, and degrees obtained, the district must withhold the submitted college transcripts pursuant to section 552.102(b) of the Government Code. To the extent the individuals whose information is 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. The district must withhold the bank account and routing number we have marked under section 552.136 of the Government Code. The district must withhold the social security

number of the district employee we have marked under section 552.147(a-1) of the Government Code. The district must release the remaining information.²

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,



Kenny Moreland
Assistant Attorney General
Open Records Division

KJM/som

Ref: ID# 551586

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²We note the remaining information includes social security numbers. Section 552.147(b) of the Government Code authorizes a government 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. Gov't Code § 552.147(b).