



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 1, 2015

Mr. Darin Darby
Escamilla & Poneck, L.L.P.
700 North Saint Mary's Street, Suite 850
San Antonio, Texas 78205

OR2015-06166

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# 558215.

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 the district has released 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 the submitted information is 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.

You inform us some of the requested information was the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2014-22818

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 section 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).

(2014).² We understand there has been no change in the law, facts, or circumstances on which the previous ruling was based. Accordingly, the district must rely on Open Records Letter No. 2014-22818 as a previous determination and withhold or release the identical information in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). We will address your arguments against disclosure of the remaining information, which was not responsive to the previous request for information.

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 21.355 of the Education Code, which provides, in part, “[a] document evaluating the performance of a teacher or administrator is confidential.” *See* 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, 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 engaged in the process of teaching, as that term is commonly defined, at the time of the evaluation. *See* ORD 643 at 4.

We understand the teacher at issue held the proper teaching certificate and was acting as a teacher at the time the evaluations were prepared. Upon review, we find some of the submitted information consists of documents that evaluate the performance of a teacher. These records, which we have marked, are confidential under section 21.355 of the Education Code and the district must withhold them under section 552.101 of the Government Code. However, we note a portion of the remaining information consists of evaluations of the educator at issue in her capacity as a coach. Thus, we find you have failed to demonstrate the remaining information consists of documents evaluating the performance of a teacher or administrator for purposes of section 21.355 of the Education Code. *See* Educ. Code § 21.353 (teachers shall be appraised only on basis of classroom teaching performance and not in connection with extracurricular activities). Accordingly, the district

²In Open Records Letter No. 2014-22818, we concluded as follows: The district must withhold the information we 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 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 marked under section 552.117(a)(1) of the Government Code; the district must withhold the information we marked under section 552.130 of the Government Code; and the district must release the remaining submitted information.

may not withhold 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). We find some of the remaining records consist of higher education transcripts of a professional public school employee. Accordingly, with the exception of the employee's name, courses taken, and degrees obtained, the district must withhold the college transcripts, which we have marked, pursuant to section 552.102(b) of the Government Code. However, we find you have failed to demonstrate the remaining information is confidential under section 552.102(b), and the district may not withhold the remaining information on that basis.

In summary, the district must rely on Open Records Letter No. 2014-22818 as a previous determination and withhold or release the identical information in accordance with that ruling. The district must withhold the marked teacher evaluations under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code. With the exception of the employee's name, courses taken, and degrees obtained, the district must withhold the college transcripts, which we have marked, pursuant to 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/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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/dls

Ref: ID# 558215

Enc. Submitted documents

c: Requestor
(w/o enclosures)