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ATTORNEY GENERAL OF TEXAS

August 21, 2015

Mr. Ronn P. Garcia
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Underwood Law Firm, P.C.
P.O. Box 16197
Lubbock, Texas 79490

OR2015-17475

Dear Mr. Garcia:

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# 577511.

The Frenship Independent School District (the "district"), which you represent, received a request for the personnel file of a named individual. The district claims the submitted information is excepted from disclosure under sections 552.101 and 552.102 of the Government Code. We have considered the exceptions the district claims and reviewed the submitted information.

First, we note some of the submitted information is subject to section 552.022 of the Government Code. Section 552.022(a) provides, in relevant part:

(a) [T]he following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

...

(18) a settlement agreement to which a governmental body is a party.

Gov't Code § 552.022(a)(18). The submitted information includes a settlement agreement subject to subsection 552.022(a)(18). The district must release the settlement agreement unless it is made confidential under the Act or other law. *Id.* The district asserts sections 552.101 and 552.102, which make information confidential under the Act. Thus, we will consider these asserted exceptions for the settlement agreement and the remaining 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." *Id.* § 552.101. Section 552.101 encompasses section 21.355 of the Education Code, which provides, "[a] document evaluating the performance of a teacher or administrator is confidential." Educ. Code § 21.355. This office has interpreted this section to apply to any document that evaluates, as that term is commonly understood, the performance of a teacher or administrator. Open Records Decision No. 643 (1996). In that opinion, this office also concluded a teacher is someone who is required to hold and does hold a certificate required under chapter 21 of the Education Code and is teaching at the time of her evaluation. *Id.*

Upon review, we find most of the information in Exhibit F.3 consists of evaluations of a teacher. The district submitted documentation reflecting the teacher at issue held the appropriate certification at the time of the evaluations. Thus, we find the district must withhold most of the information in Exhibit F.3 under section 21.355 in conjunction with section 552.101 of the Government Code. However, Exhibit F.2 and the remaining information in Exhibit F.3, which we have indicated, are not evaluations for purposes of section 21.355. Thus, Exhibit F.2 and the remaining information in Exhibit F.3 are not confidential under section 21.355 of the Education Code, and the district may not withhold them under section 552.101 of the Government Code on that basis.

Section 552.101 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 stated in numerous opinions the work behavior of a public employee and the conditions for the employee's continued employment are generally matters of legitimate public interest not protected by the common-law right of privacy. *See* Open Records Decision Nos. 438 (1986), 405 at 2-3 (1983) (public has interest in manner in which public employee performs his job), 329 at 2 (1982) (information relating to complaints against public employees and discipline resulting therefrom is not protected under former section 552.101), 208 at 2 (1978) (information relating to complaint against public employee and disposition of the complaint is not protected under either constitutional or common-law right of privacy). Upon review, we find the remaining information is not highly intimate or

embarrassing, and it is of legitimate public concern. Thus, the district may not withhold the remaining information under section 552.101 in conjunction with common-law privacy.

Section 552.101 also encompasses the doctrine of constitutional privacy. Constitutional privacy consists of two interrelated types of privacy: (1) the right to make certain kinds of decisions independently and (2) an individual's interest in avoiding disclosure of personal matters. Open Records Decision No. 455 at 4 (1987). The first type protects an individual's autonomy within "zones of privacy" which include matters related to marriage, procreation, contraception, family relationships, and child rearing and education. *Id.* The second type of constitutional privacy requires a balancing between the individual's privacy interests and the public's need to know information of public concern. *Id.* The scope of information protected is narrower than that under the common law doctrine of privacy; the information must concern the "most intimate aspects of human affairs." *Id.* at 5 (citing *Ramie v. City of Hedwig Village, Tex.*, 765 F.2d 490 (5th Cir. 1985)). Upon review, we find the district failed to demonstrate the remaining information falls within the zones of privacy or implicates an individual's privacy interests for purposes of constitutional privacy. Consequently, the district may not withhold the remaining information under section 552.101 of the Government Code in conjunction with constitutional privacy.

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, 348 (Tex. 2010). Upon review, we find the remaining information is not private pursuant to section 552.102(a) of the Government Code, and the district may not withhold it on that basis.

Section 552.102(b) of the Government Code excepts from disclosure "a transcript from an institution of higher education maintained in the personnel file of a professional public school employee[.]" Gov't Code § 552.102(b). This exception further provides, however, "the degree obtained or the curriculum on a transcript in the personnel file of the employee" are not excepted from disclosure. *Id.* Upon review, we find except for the information that reveals the employee's name, the degree obtained, and the courses taken, the district must withhold the educational transcripts under section 552.102(b) of the Government Code. *See* Open Records Decision No. 526 (1989) (addressing statutory predecessor).

Section 552.117(a)(1) of the Government Code excepts from disclosure the home addresses and telephone numbers, emergency contact information, social security numbers, and family member information of current or former officials or employees of a governmental body who request this information be kept confidential under section 552.024 of the Government Code, except as provided by section 552.024(a-1). 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). We note section 552.117 is also applicable to personal cellular telephone numbers, provided the cellular telephone service is not paid for by a governmental body. *See* Open Records Decision No. 506 at 5-6 (1988) (section 552.117 not applicable to cellular telephone numbers paid for by governmental body and intended for official use). Whether a particular piece of information is protected by section 552.117(a)(1) must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Thus, pursuant to section 552.117(a)(1), the district must withhold the home address, home and cellular telephone numbers, and family member information of the former district employee if she made a request for confidentiality under section 552.024 prior to the date the district received the request for the information. However, the district may only withhold the marked cellular telephone numbers if the district did not pay for the service. To the extent the former district employee did not timely request confidentiality under section 552.024, the district may not withhold the marked information under section 552.117(a)(1) of the Government Code.

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." Gov't Code § 552.147(a-1). Thus, section 552.147(a-1) makes 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. *Id.* § 552.024(a-1) (school district may not require employee or former employee of district to choose whether to allow public access to employee's or former employee's social security number). Reading sections 552.024(a-1) and 552.147(a-1) together, we conclude 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 former district employee under section 552.147(a-1) of the Government Code.

In summary, except for the information we have indicated, the district must withhold the information in Exhibit F.3 under section 21.355 of the Education Code in conjunction with section 552.101 of the Government Code. Except for the information that reveals the employee's name, the degree obtained, and the courses taken, the district must withhold the educational transcripts under section 552.102(b) of the Government Code. To the extent the former district employee at issue 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. However, the district may only withhold the marked cellular telephone numbers if the district did not pay for the service. The district must withhold the former district employee's social security number under section 552.147(a-1) 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,

A handwritten signature in black ink, appearing to read 'Yen-Ha Le', with a stylized flourish at the end.

Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/sdk

Ref: ID# 577511

Enc. Marked documents

c: Requestor
(w/o enclosures)