



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

September 14, 2015

Mr. Orlando Juarez, Jr.  
Counsel for the San Marcos Consolidated I.S.D.  
J. Cruz & Associates, LLC  
216 West Village Boulevard, Suite 202  
Laredo, Texas 78041

OR2015-19101

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# 579013.

The San Marcos Consolidated Independent School District (the "district"), which you represent, received a request for information pertaining to two named individuals, including the personnel file for one of the named individuals. We understand the district will redact social security numbers pursuant to section 552.147(b) of the Government Code.<sup>1</sup> You claim the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.117 and 552.130 of the Government Code.<sup>2</sup> We have considered the exceptions you claim and reviewed the submitted information.

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<sup>1</sup>We note 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. *See* Gov't Code § 552.147(b).

<sup>2</sup>We 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), (e). Nevertheless, because the exception the district claims can provide a compelling reason to overcome the presumption of openness, we will consider the district's claimed exceptions for the submitted information. *See id.* §§ 552.007, .302, .352. Although the district does not raise section 552.117, and 552.130 of the Government Code in its brief, we understand it to raise these exceptions based on its markings.

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. This section encompasses information protected by other statutes, such as section 21.355 of the Education Code, which 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, 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 id.* at 4. Additionally, the courts have concluded a written reprimand constitutes an evaluation for purposes of section 21.355 as it “reflects the principal’s judgment regarding [a teacher’s] actions, gives corrective direction, and provides for further review.” *North East Indep. Sch. Dist. v. Abbott*, 212 S.W.3d 364 (Tex. App.—Austin 2006, no pet.).

You contend portions of the submitted information are confidential under section 21.355. Upon review, we find portions of the information in Exhibit A consist of evaluations of a teacher. You state the teacher at issue held a teaching certificate under subchapter B of chapter 21 and was acting as a teacher at the time of the evaluation for the purposes of section 21.355. Based on your representations, we find the district must withhold the evaluations we have marked under section 552.101 in conjunction with section 21.355(a).

Section 552.101 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 the disclosure is regarding notification to a parent of the assignment of an uncertified teacher to a classroom as required by Section 21.057.

Act of June 1, 2015, 84<sup>th</sup> Leg., R.S., c.h. 931, § 11, 2015 Tex. Sess. Law Serv. 3210, 3215 (Vernon). Upon review, we find the information in Exhibit B consists of or reveals teacher certification examination results administered under section 21.048. Therefore, the district must withhold the information you have marked in Exhibit B pursuant to section 552.101 of the Government Code in conjunction with section 21.048(c-1) of the Education Code.

Section 552.101 also encompasses information made confidential by statute, such as the Medical Practice Act (“MPA”), subtitle B of title 3 of the Occupations Code, which governs release of medical records. Section 159.002 of the MPA provides, in relevant part:

(a) A communication between a physician and a patient, relative to or in connection with any professional services as a physician to the patient, is confidential and privileged and may not be disclosed except as provided by this chapter.

(b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.

(c) A person who receives information from a confidential communication or record as described by this chapter, other than a person listed in Section 159.004 who is acting on the patient's behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

Occ. Code § 159.002(a)-(c). Information subject to the MPA includes both medical records and information obtained from those medical records. *See id.* §§ 159.002, .004. This office has concluded the protection afforded by section 159.002 extends only to records created by either a physician or someone under the supervision of a physician. *See* Open Records Decision Nos. 487 (1987), 370 (1983), 343 (1982). Upon review, we find the information contained in Exhibit D constitutes records of the identity, diagnosis, evaluation, or treatment of a patient by a physician that were created or are maintained by a physician. Accordingly, the district must withhold the medical record in Exhibit D under section 552.101 of the Government Code in conjunction with the MPA.

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 marked date of birth under section 552.102(a) of the Government Code.

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.* Thus, with the exception of the employee’s name, courses taken, and degree obtained, the district must withhold the submitted college transcripts pursuant to section 552.102(b) of the Government Code.

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 id.* § 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 employee whose information is at issue timely requested confidentiality under section 552.024 of the Government Code, the district must withhold the information it has marked under section 552.117(a)(1) of the Government Code. Conversely, to the extent the employee whose information is at issue did not timely request confidentiality under section 552.024, the district may not withhold the information at issue under section 552.117(a)(1).

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's or 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(a). Upon review, we find the district must withhold the motor vehicle record information it has marked under section 552.130 of the Government Code.

In summary, the district must withhold the evaluations contained in Exhibit A under section 552.101 of the Government Code in conjunction with section 21.355(a) of the education Code. The district must withhold the information you have marked in Exhibit B pursuant to section 552.101 of the Government Code in conjunction with section 21.048(c-1) of the Education Code. The district must withhold the marked date of birth under section 552.102(a) of the Government Code. With the exception of the employee's name, courses taken, and degree obtained, the district must withhold the submitted college transcripts pursuant to section 552.102(b) of the Government Code. The district must withhold the medical record in Exhibit D under section 552.101 of the Government Code in conjunction with the MPA. To the extent the employee whose information is at issue timely requested confidentiality under section 552.024 of the Government Code, the district must withhold the information you have marked under section 552.117(a)(1) of the Government Code. The district must withhold the motor vehicle record information you have marked under section 552.130 of the Government Code. The remaining information must be released.

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](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 that reads "Katelyn Blackburn-Rader". The signature is written in a cursive, flowing style.

Katelyn Blackburn-Rader  
Assistant Attorney General  
Open Records Division

KB-R/akg

Ref: ID# 579013

Enc. Submitted documents

c: Requestor  
(w/o enclosures)