



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 25, 2015

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

OR2015-20182

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# 580649.

The San Antonio Independent School District (the "district"), which you represent, received a request for any records concerning a named former employee. You state the district will redact information subject to section 552.117 of the Government Code as permitted by section 552.024(c) 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. In addition, you state release of this information may implicate the privacy interest of the named former employee. Accordingly, you state and provide documentation showing, you notified this former employee of the request for information and of her right to submit arguments to this office as to why the submitted information should not be released. *See* Gov't Code § 552.304 (interested third party may submit comments stating why information should or should not

¹Section 552.117 of the Government Code excepts from disclosure the home addresses and telephone numbers, social security numbers, emergency contact information, and family member information of current or former officials or employees of a governmental body. *See* Gov't Code § 552.117. Section 552.024 of the Government Code authorizes a governmental body to withhold information subject to section 552.117 without requesting a decision from this office if the employee or official or former employee or official chooses not to allow public access to the information. *See id.* § 552.024(c). 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* Gov't Code § 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. *See id.* § 552.147(b).

be released). We have considered the exceptions you claim and reviewed the submitted representative sample of information.²

Initially, we note the district has redacted the date of birth of the former employee at issue in the request. You do not assert, nor does our review of the records indicate, you have been authorized to withhold this information without seeking a ruling from this office. *See id.* § 552.301(a); Open Records Decision No. 673 (2001). Therefore, information must be submitted in a manner that enables this office to determine whether the information comes within the scope of an exception to disclosure. In this instance, we can discern the nature of the redacted information; thus, being deprived of this information does not inhibit our ability to make a ruling. In the future, however, the district should refrain from redacting any information it is not authorized to withhold in seeking an open records ruling. Failure to do so may result in the presumption the redacted information is public. *See Gov't Code* § 552.302.

Section 552.101 of the Government Code exempts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” *Id.* § 552.101. Section 552.101 of the Government Code 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 form in this instance would be “for purposes other than enforcement” of the referenced federal statutes. Accordingly, we conclude the submitted I-9 form, which we have marked, is confidential pursuant to section 1324a of title 8 of the United States Code; the district must withhold this information under section 552.101 of the Government Code in conjunction with federal law.

Section 552.101 of the Government Code also encompasses section 21.048 of the Education Code. Section 21.048 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.

²We assume that the “representative sample” of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Act of June 1, 2015, 84th Leg., R.S., ch. 931, § 11, 2015 Tex. Sess. Law Serv. 3210, 3215 (to be codified as an amendment to Educ. Code § 21.048(c-1)). However, we note section 21.048 of the Education Code was originally added by the 74th Legislature in 1995. See Act of May 29, 1995, 74th Leg., R.S., ch. 260, § 1 (effective May 30, 1995). You contend the submitted information includes examination results subject to section 21.048 of the Education Code. However, the submitted information indicates some of the examinations at issue were administered before May 30, 1995. Thus, we conclude these examinations were not administered under section 21.048 of the Education Code. Thus, to the extent the information we have marked reflects the results of examinations administered under section 21.048, 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. However, if the information we have marked does not reflect the results of examinations administered under section 21.048, then the district may not withhold the information we have marked under section 552.101 in conjunction with section 21.048(c-1). Furthermore, we find the remaining information does not consist of the results of examinations administered under section 21.048, and the district may not withhold it under section 552.101 on that basis.

Section 552.101 of the Government Code also encompasses section 21.355 of the Education Code. Section 21.355 provides, in relevant part, “[a] document evaluating the performance of a teacher or administrator is confidential.” Educ. Code § 21.355(a). The Third Court of Appeals has concluded 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.). 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 administrator. See Open Records Decision No. 643 (1996). In Open Records Decision No. 643, we determined an “administrator” for purposes of section 21.355 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 as an administrator, as that term is commonly defined, at the time of the evaluation. *Id.* You argue some of the submitted information contains confidential evaluations of a district administrator. You indicate the administrator at issue was certified as a administrator by the State Board of Educator Certification and was acting as an administrator at the times the evaluations were prepared. Upon review, we find the district has demonstrated the applicability of section 21.355 to some of the information at issue, which we have marked. Accordingly, 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.³ However, the remaining information at issue consists of employment records that do not evaluate the named former employee’s performance. We find none of this information consists of evaluations for the purposes of section 21.355 of

³As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

the Education Code. Accordingly, the district may not withhold any of the remaining information at issue under section 552.101 of the Government Code on the basis of section 21.355.

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 (Tex. 2010). Upon review, we find the district must withhold the former employee’s date of birth throughout the submitted information under section 552.102(a) of the Government 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). Accordingly, with the exception of the employee’s names, courses taken, and degrees obtained, the district must withhold the submitted college transcripts pursuant to section 552.102(b) of the Government Code.

As noted above, the district has redacted some information pursuant to section 552.117 of the Government Code. Section 552.117(a)(1) of the Government Code excepts from disclosure the home addresses and telephone numbers, social security numbers, emergency contact information, 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). *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 withhold under section 552.117 only 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. 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). Consequently, information may only be withheld under section 552.117(a)(1) on behalf of a current or former district 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. The submitted information reflects the former employee timely requested confidentiality under section 552.024. The district must withhold the additional information of the former employee at issue in the request we have marked under section 552.117 of the Government Code. The submitted records also include information about a district employee other than the one at issue in the request. Accordingly, if the other employee whose

information is at issue made a timely election under section 552.024, then the district must withhold the information we have marked under section 552.117(a)(1) of the Government Code.

As noted above, the district has also redacted some information pursuant to section 552.130(c) of the Government Code. We note the remaining information contains additional information subject to section 552.130. 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. *See Gov't Code § 552.130.* Accordingly, the district must withhold the additional motor vehicle record information we have marked under section 552.130 of the Government Code.

Section 552.137 of the Government Code 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).⁴ *See id.* § 552.137(a)-(c). Section 552.137 does not apply to an institutional e-mail address, the general e-mail address of a business, an e-mail address of a person who has a contractual relationship with a governmental body, an e-mail address of a vendor who seeks to contract with a governmental body, an e-mail address maintained by a governmental entity for one of its officials or employees, or an e-mail address provided to a governmental body on a letterhead. *See id.* § 552.137(c). The district must withhold the personal e-mail address we have marked under section 552.137 of the Government Code, unless the owner affirmatively consents to its public disclosure.

Section 552.147(a-1) of the Government Code provides, "[t]he social security number of an employee of a school district in the custody of the district is confidential." *Id.* § 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. Therefore, the district must withhold the information we have marked under section 552.147(a-1) of the Government Code.

⁴The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

In summary, the submitted I-9 form, which we have marked, must be withheld under section 552.101 of the Government Code in conjunction with federal law. To the extent the information we have marked reflects the results of examinations administered under section 21.048 of the Education Code, 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 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 former employee's date of birth throughout the submitted information under section 552.102(a) of the Government Code. 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. The district must withhold the additional information we have marked for the employee at issue in the request under section 552.117(a)(1) of the Government Code. If the other employee whose information is at issue made a timely election under section 552.024, then the district must withhold the information we have marked under section 552.117(a)(1) of the Government Code. The district must withhold the additional motor vehicle record information we have marked under section 552.130 of the Government Code. The district must withhold the personal e-mail address we have marked under section 552.137 of the Government Code, unless the owner affirmatively consents to its public disclosure. The district must withhold the information we have marked under section 552.147(a-1) of the Government Code. The remaining submitted 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, 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,



Ramsey A. Albarca
Assistant Attorney General
Open Records Division

RAA/dls

Ref: ID# 580649

Enc. Submitted documents

c: Requestor
(w/o enclosures)