



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 28, 2015

Mr. Christopher H. Schulz
Counsel for the San Felipe Del Rio Consolidated Independent School District
Shulman, Lopez, Hoffer & Adelstein, L.L.P.
517 Soledad Street
San Antonio, Texas 78205-1508

OR2015-22624

Dear Mr. Schulz:

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# 584866.

The San Felipe Del Rio Consolidated Independent School District (the "district"), which you represent, received a request for personnel records for three named district officers.¹ You claim the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.114, 552.117, 552.130, 552.136, 552.137, and 552.140 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the submitted information contains peace officers' Texas Commission on Law Enforcement ("TCOLE") identification numbers. Section 552.002(a) of the Government Code defines "public information" as information that is written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

¹We note the district sought and received clarification of the information requested. *See* Gov't Code § 552.222(b) (providing if request for information is unclear, governmental body may ask requestor to clarify request); *see also* *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

(1) by a governmental body;

(2) for a governmental body and the governmental body:

(A) owns the information;

(B) has a right of access to the information; or

(C) spends or contributes public money for the purpose of writing, producing, collecting, assembling, or maintaining the information; or

(3) by an individual officer or employee of a governmental body in the officer's or employee's official capacity and the information pertains to official business of the governmental body.

Gov't Code § 552.002(a). In Open Records Decision No. 581 (1990), this office determined certain computer information, such as source codes, documentation information, and other computer programming, that has no significance other than its use as a tool for the maintenance, manipulation, or protection of public property is not the kind of information made public under section 552.021 of the Government Code. We understand an officer's TCOLE identification number is a unique computer-generated number assigned to peace officers for identification in the commissioner's electronic database, and may be used as an access device number on the TCOLE website. Accordingly, we find the officers' TCOLE identification numbers in the submitted information do not constitute public information under section 552.002 of the Government Code. Therefore, the TCOLE identification numbers are not subject to the Act and need not be released to the requestor.

Next, we note the United States Department of Education Family Policy Compliance Office has informed this office the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code, does not permit state and local educational authorities to disclose to this office, without parental or an adult student's consent, unredacted, personally identifiable information contained in education records for the purpose of our review in the open records ruling process under the Act.² Consequently, state and local educational authorities that receive a request for education records from a member of the public under the Act must not submit education records to this office in unredacted form, that is, in a form in which "personally identifiable information" is disclosed. *See* 34 C.F.R. § 99.3 (defining "personally identifiable information"). You have submitted unredacted education records for our review. Because our office is prohibited from reviewing these education records to determine whether appropriate redactions under FERPA have been made, we will not address the applicability of FERPA to any of the submitted

²A copy of this letter may be found on the Office of the Attorney General's website at <http://www.oag.state.tx.us/open/20060725usdoe.pdf>.

records. *See* 20 U.S.C. § 1232g(a)(1)(A). Such determinations under FERPA must be made by the district. Likewise, we do not address your argument under section 552.114 of the Government Code. *See* Gov't Code § 552.026 (incorporating FERPA into the Act); Act of May 29, 2015, 84th Leg., R.S., ch. 828 § 1, 2015, Tex. Sess. Law Serv. 2479, 2479 (Vernon) (to be codified as an amendment to Gov't Code § 552.114); Open Records Decision No. 539 (1990) (determining the same analysis applies under section 552.114 of the Government Code and FERPA). However, we will consider your remaining arguments against disclosure of the submitted information that is subject to the Act.

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 encompasses information protected by federal law, such as 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 and must be withheld under section 552.101 of the Government Code.³

Section 552.101 of the Government Code also encompasses the Medical Practice Act (“MPA”), subtitle B of title 3 of the Occupations Code, which governs release of medical records. *See* Occ. Code §§ 151.001-168.202. 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

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

information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

Id. § 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 a portion of the remaining information, which we have marked, constitutes records of the identity, diagnosis, evaluation, or treatment of a patient by a physician that were created or are maintained by a physician and information obtained from a patient's medical records. Accordingly, the district must withhold the information we have marked under section 552.101 of the Government Code in conjunction with the MPA.⁴

Section 552.101 of the Government Code also encompasses section 21.355 of the Education Code, which provides, in relevant part, “[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 administrator. *See* Open Records Decision No. 643 (1996). In Open Records Decision No. 643, we 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 in the process of teaching, as that term is commonly defined, at the time of the evaluation. *See id.* at 4.

You contend some of the remaining information consists of confidential evaluations of a teacher by the district. You inform us the teacher at issue held the proper teaching certificate and was acting as a teacher at the time evaluations were prepared. However, we note some of the evaluations at issue pertain to an individual employed as a computer technician with the district or as a peace officer with the district's police department. Section 21.355 protects evaluations of only teachers and administrators who held the proper certifications and were performing the functions of teachers and administrators at the times of the evaluations. You do not inform us this employee was certified as a teacher by the State Board of Educator Certification and was acting as a teacher at the time these evaluations were prepared. Upon 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.⁵ However, we find you have failed to demonstrate any of the remaining information consists of documents evaluating the performance of a teacher for purposes of

⁴As our ruling is dispositive, we need not consider your remaining arguments against disclosure of this information.

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section 21.355 of the Education Code. Accordingly, 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 section 39.030 of the Education Code, which provides in relevant part:

(b) The results of individual student performance on academic skills assessment instruments administered under [subchapter B, chapter 39 of the Education Code] are confidential and may be released only in accordance with [FERPA]. However, overall student performance data shall be aggregated by ethnicity, sex, grade level, subject area, campus, and district and made available to the public, with appropriate interpretations, at regularly scheduled meetings of the board of trustees of each school district. The information may not contain the names of individual students or teachers.

Educ. Code § 39.030(b). The information at issue contains results of student performance on the Texas Education Assessment of Minimum Skills, the Texas Assessment of Academic Skills, the Stanford Achievement Test, and the Comprehensive Test of Basic Skills, which are academic skills assessment instruments as contemplated by subchapter B, chapter 39 of the Education Code. Therefore, the district must withhold the test results we have marked under section 39.030(b) of the Education Code in conjunction with section 552.101 of the Government Code.⁶

Section 552.101 of the Government Code also encompasses section 21.048 of the Education Code, which is applicable to information relating to teacher certification examinations. Section 21.048(c-1) provides the following:

The results of an examination administered under this section are confidential and are not subject to disclosure under [the Act], 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, 84th Leg., R.S., ch. 931, § 11, 2015 Tex. Sess. Law Serv. 3210, 3215 (Vernon) (to be codified as an amendment to Educ. Code § 21.048(c-1)). Some of the remaining information consists of reports of the results of Texas Examinations of Educator Standards (“TEExES”) examinations administered to the former employee. Accordingly, we conclude the district must withhold the results of the examinations, which we have marked, under section 552.101 of the Government Code in conjunction with section 21.048 of the

⁶As our ruling is dispositive, we need not consider your remaining arguments against disclosure of this information.

Education Code.⁷ Upon review, we find none of the remaining information is subject to section 21.048, and the district may not withhold any of the remaining information under section 552.101 on that basis.

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). Having carefully reviewed the information at issue, we have marked information that must be withheld under section 552.102(a) of the Government Code.⁸

Section 552.102(b) of the Government Code excepts from public 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, that “the degree obtained or the curriculum on a transcript in the personnel file of the employee” are not excepted from disclosure. *Id.*; *see also* Open Records Decision No. 526 (1989). Thus, with the exception of the employees’ names, courses taken, and degrees obtained, the district must withhold the submitted college transcripts pursuant to section 552.102(b) of the Government Code.⁹

Section 552.117(a)(2) of the Government Code excepts from public disclosure the home address, home telephone number, emergency contact information, and social security number of a peace officer, as well as information that reveals whether the peace officer has family members, regardless of whether the peace officer complies with sections 552.024 and 552.1175 of the Government Code. *See* Gov’t Code § 552.117(a)(2). Section 552.117(a)(2) applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure. 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). We also 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

⁷As our ruling is dispositive, we need not consider your remaining arguments against disclosure of this information.

⁸As our ruling is dispositive, we need not consider your remaining arguments against disclosure of this information.

⁹As our ruling is dispositive, we need not consider your remaining arguments against disclosure of this information.

harassed at home). Accordingly, the district must withhold the information we have marked under section 552.117(a)(2) of the Government Code; however, the cellular telephone numbers we have marked may only be withheld if a governmental body does not pay for the cellular telephone service.¹⁰ Upon review, we find none of the remaining information is subject to section 552.117(a)(2), and the district may not withhold it on that basis.

Some of the remaining information may be subject to section 552.1175 of the Government Code.¹¹ Section 552.1175 protects the home address, home telephone number, emergency contact information, date of birth, social security number, and family member information of certain individuals, when that information is held by a governmental body in a non-employment capacity and the individual elects to keep the information confidential. *See* Gov't Code § 552.1175. Section 552.1175 applies, in part, to “peace officers as defined by Article 2.12, Code of Criminal Procedure[.]” *Id.* § 552.1175(a)(1). Some of the remaining information relates to individuals who were licensed as peace officers of other law enforcement agencies at the time the information at issue was created. However, we are unable to determine from the information provided which, if any, of the individuals at issue are currently licensed peace officers. Thus, we must rule conditionally. Accordingly, to the extent the information at issue, which we have marked, relates to individuals who are currently licensed as peace officers and who elect to restrict access to the information in accordance with section 552.1175(b), the district must withhold the marked information under section 552.1175 of the Government Code.¹² Conversely, if the individuals whose information is at issue are not currently licensed as peace officers or do not elect to restrict access to their information in accordance with section 552.1175(b), the marked information may not be withheld under section 552.1175.

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 id.* § 552.130(a). Accordingly, the district must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.¹³ However, we find none of the remaining information consists of motor

¹⁰As our ruling is dispositive, we need not consider your remaining arguments against disclosure of this information.

¹¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

¹²As our ruling is dispositive, we need not consider your remaining arguments against disclosure of this information.

¹³As our ruling is dispositive, we need not consider your remaining arguments against disclosure of this information.

vehicle record information for purposes of section 552.130, and the district may not withhold it on that basis.

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.” *Id.* § 552.136(b); *see id.* § 552.136(a) (defining “access device”). Accordingly, the district must withhold the bank account and routing numbers we have marked under section 552.136 of the Government Code.¹⁴ However, we find none of the remaining information is subject to section 552.136, and the district may not withhold it on that basis.

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). *See id.* § 552.137(a)-(c). The e-mail addresses at issue are not excluded by subsection (c). Therefore, the district must withhold the personal e-mail addresses we have marked under section 552.137 of the Government Code, unless the owners affirmatively consent to their public disclosure.¹⁵ However, we find none of the remaining information is subject to section 552.137, and the district may not withhold any of the remaining information on that basis.

Section 552.140 of the Government Code provides a military veteran’s DD-214 form or other military discharge record that is first recorded with, or that otherwise first comes into the possession of, a governmental body on or after September 1, 2003, is confidential for a period of seventy-five years and may only be disclosed in accordance with section 552.140 or in accordance with a court order. *See id.* § 552.140(a)-(b). The district came into possession of the submitted military discharge record after September 1, 2003. Accordingly, we conclude the district must withhold the military discharge record we have marked under section 552.140 of the Government Code. However, we find no portion of the remaining information is confidential under section 552.140 of the Government Code. Therefore, the district may not withhold any portion of the remaining information on that basis.

In summary, the TCOLE identification numbers are not subject to the Act and need not be released to the requestor. The district must withhold the information we have marked under section 552.101 of the Government Code in conjunction with (1) section 1324a of title 8 of the United States Code, (2) the MPA, (3) section 21.355 of the Education Code, (4) section 39.090 of the Education Code, and (5) section 21.048 of the Education Code. The district must also withhold (1) the dates of birth we have marked under section 552.102(a)

¹⁴As our ruling is dispositive, we need not consider your remaining arguments against disclosure of this information.

¹⁵As our ruling is dispositive, we need not consider your remaining argument against disclosure of this information.

of the Government Code; (2) the transcripts we have marked under section 552.102(b) of the Government Code, with the exception of the employees' names, courses taken, and degrees obtained; (3) the information we have marked under section 552.117(a)(2) of the Government Code, if a governmental body does not pay for the cellular telephone service; (4) the information we have marked under section 552.1175 of the Government Code, to the extent the information at issue relates to individuals who are currently licensed as peace officers and who elect to restrict access to the information in accordance with section 552.1175(b); (5) the motor vehicle record information we have marked under section 552.130 of the Government Code; (6) the bank account and routing numbers we have marked under section 552.136 of the Government Code; (7) the personal e-mail addresses we have marked under section 552.137 of the Government Code, unless the owners affirmatively consent to their public disclosure; and (8) the military discharge record we have marked under section 552.140 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,



Nicholas A. Ybarra
Assistant Attorney General
Open Records Division

NAY/bhf

Ref: ID# 584866

Enc. Submitted documents

c: Requestor
(w/o enclosures)