



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 22, 2016

Ms. Julie C. Allen
General Counsel
Spring Independent School District
16717 Ella Boulevard
Houston, Texas 77090

OR2016-09081

Dear Ms. Allen:

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# 606844 (Spring ISD PIR No. 260).

The Spring Independent School District (the "district") received a request for a named employee's personnel file. You state the district will release some information to the requestor. You claim the submitted information is excepted from disclosure under sections 552.026, 552.101, 552.102, 552.114, and 552.117 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, you claim some of the submitted information is protected by the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code. The United States Department of Education Family Policy Compliance Office has informed this office FERPA 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.¹ 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

¹A copy of this letter may be found on the Office of the Attorney General's website at <https://www.texasattorneygeneral.gov/files/og/20060725usdoe.pdf>.

“personally identifiable information” is disclosed. *See* 34 C.F.R. § 99.3 (defining “personally identifiable information”). You assert FERPA applies to the information submitted as Exhibit C. Because our office is prohibited from reviewing these records to determine whether appropriate redactions under FERPA have been made, we will not address the applicability of FERPA to any of the submitted 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 sections 552.026 or 552.114 of the Government Code. *See* Gov’t Code §§ 552.026 (incorporating FERPA into the Act), .114 (excepting from disclosure “student records”); 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 arguments against disclosure of the submitted information.

Next, we note you have redacted portions of the submitted information. You state you will withhold information pursuant to Open Records Decision No. 684 (2009).² Furthermore, we note you have redacted information that is subject to section 552.117 of the Government Code pursuant to section 552.024 of the Government Code.³ You do not assert, nor does our review of the records indicate, you have been authorized to withhold the remaining information you have redacted without seeking a ruling from this office. *See* Gov’t Code § 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 additional 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 that 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 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” *Id.* § 552.101. This section encompasses information protected by other statutes. Section 21.048 of the Education Code provides, in relevant part, the following:

²Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold certain categories of information, including personal e-mail addresses pursuant to section 552.137 of the Government Code, without the necessity of requesting an attorney general decision. *See* ORD 684.

³Section 552.024 of the Government Code authorizes a governmental body to redact from public release a current or former employee’s home address and telephone number, emergency contact information, social security number, and family member information excepted from disclosure under section 552.117(a)(1) without the necessity of requesting a decision from this office under the Act, if the employee timely elected to withhold such information. *See* Gov’t Code §§ 552.024(a)-(c), .117(a)(1).

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

Educ. Code § 21.048(c-1). Upon review, we find the information we have marked reflects the results of an examination administered under section 21.048 of the Education Code. We have no indication section 21.057 of the Education Code is applicable in this instance. Accordingly, the district must withhold the information we have marked under section 552.101 in conjunction with section 21.048(c-1) of the Education Code.⁴

Section 552.101 of the Government Code also encompasses information protected by section 21.355 of the Education Code, which provides, in relevant part, “[a] document evaluating the performance of a teacher or administrator is confidential.” *Id.* § 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 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 portions of the remaining information consist of confidential evaluations of a district teacher by the district. You state the teacher at issue was certified as a teacher by the State Board of Educator Certification and was acting as a teacher at the time the evaluations were prepared. Upon review, we find some of the information at issue, which we have marked, consists of evaluations of a district teacher. Thus, the district must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code.⁵ However, the remaining information you seek to withhold on this basis does not consist of documents evaluating the performance of a teacher for purposes of section 21.355. Thus, no portion of the remaining information is confidential under section 21.355 of the Education Code and the district may not withhold any of the remaining information under section 552.101 of the Government Code on that basis.

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

⁵As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

Section 552.101 of the Government Code also encompasses section 261.201(a) of the Family Code, which provides as follows:

[T]he following information is confidential, is not subject to public release under [the Act], and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

- (1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and
- (2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201(a). You assert portions of the remaining information were used or developed in an investigation under chapter 261. *See id.* §§ 101.003(a) (defining “child” for purposes of section 261.201), 261.001(1), (4) (defining “abuse” and “neglect” for purposes of section 261.201). We note the district is not an agency authorized to conduct a chapter 261 investigation. *See id.* § 261.103 (listing agencies that may conduct child abuse investigations). Upon review, we find you have failed to demonstrate the remaining information was used or developed in an investigation of alleged or suspected child abuse or neglect, or consists of a report of alleged or suspected abuse or neglect under chapter 261 of the Family Code. Therefore, the remaining information is not confidential under section 261.201, and the district may not withhold any of it under section 552.101 on that basis.

Section 552.102(b) of the Government Code excepts from disclosure all information in transcripts of a professional public school employee other than the employee’s name, the courses taken, and the degree obtained. Gov’t Code § 552.102(b); Open Records Decision No. 526 (1989). Thus, with the exception of the employee’s name, courses taken, and degree obtained, the district must withhold the information we have marked under section 552.102(b).⁶ However, we find none of the remaining information at issue consists of higher education transcripts of a professional public school employee. Therefore, the district may not withhold any of the remaining information at issue under section 552.102(b) of the Government Code.

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

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

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). Accordingly, the district must withhold the employee’s date of birth we have marked under section 552.102(a) of the Government Code.⁷

Section 552.101 of the Government Code 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 also held common-law privacy protects the identifying information of a juvenile victim of abuse or neglect. *See* Open Records Decision No. 394 (1983); *cf.* Fam. Code § 261.201. A compilation of an individual’s criminal history is highly embarrassing information, the publication of which would be highly objectionable to a reasonable person. *Cf. U.S. Dep’t of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (finding significant privacy interest in compilation of individual’s criminal history by recognizing distinction between public records found in courthouse files and local police stations and compiled summary of criminal history information). Furthermore, we find a compilation of a private citizen’s criminal history is generally not of legitimate concern to the public. However, we note the public generally has a legitimate interest in information that relates to public employment and public employees. *See* Open Records Decision Nos. 542 (1990), 470 at 4, 444 at 5-6 (1986) (public has legitimate interest in knowing reasons for dismissal, demotion, promotion, or resignation or public employees), 432 at 2 (1984) (scope of public employee privacy is narrow). Upon review, we find the information we have marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the district must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find you have failed to demonstrate any portion of the remaining information is highly intimate or embarrassing and of no legitimate public interest. Accordingly, the district may not withhold any portion of the remaining information under section 552.101 of the Government Code on the basis of common-law privacy.

As previously mentioned, you have redacted information subject to section 552.117(a)(1) of the Government Code. We note the remaining information contains additional information subject to section 552.117, which excepts from disclosure the home address and telephone number, emergency contact information, social security number, and family member

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

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, 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 only withhold under section 552.117 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 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 only be withheld under section 552.117(a)(1) on behalf of a current or former employee 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. You state the employee at issue timely elected confidentiality under section 552.024. Therefore, the district must withhold the information we have indicated under section 552.117(a)(1) of the Government Code.

We note the remaining information contains information subject to section 552.130 of the Government Code, which 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.⁸ Gov't Code § 552.130(a). Upon review, we find the district must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.

In summary, the district must withhold: (1) 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; (2) the information we marked under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code; (3) the information we have marked under section 552.102(b) of the Government Code, with the exception of the employee's name, courses taken, and degree obtained; (4) the employee's date of birth we have marked under section 552.102(a) of the Government Code; (5) the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy; (6) the information we have indicated under section 552.117(a)(1) of the Government Code; and (7) the motor vehicle record information we have marked under section 552.130 of the Government Code. The district must release the remaining information.

⁸The 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).

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 'Tim Neal', with a stylized, cursive script.

Tim Neal
Assistant Attorney General
Open Records Division

TN/bhf

Ref: ID# 606844

Enc. Submitted documents

c: Requestor
(w/o enclosures)