



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

September 12, 2016

Mr. Darin Darby  
For the San Antonio Independent School District  
Escamilla & Poneck, LLP  
700 North St. Mary's Street, Suite 850  
San Antonio, Texas 78205

OR2016-20553

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# 625950.

The San Antonio Independent School District (the "district"), which you represent, received a request for reports sent by the superintendent to the State Board for Educator Certification ("SBEC") to report teacher misconduct pursuant to section 249.14 of title 19 of the Texas Administrative Code. The district states it is redacting some information pursuant to the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code.<sup>1</sup> The district also states it will withhold information under sections 552.024 and 552.147 of the Government Code.<sup>2</sup> The district claims the submitted

---

<sup>1</sup>The United States Department of Education Family Policy Compliance Office (the "DOE") has informed this office FERPA does not permit state and local educational authorities to disclose to this office, without parental consent, unredacted, personally identifiable information contained in education records for the purpose of our review in the open records ruling process under the Act. The DOE has determined FERPA determinations must be made by the educational authority in possession of the education records. We have posted a copy of the letter from the DOE to this office on the Attorney General's website: <https://www.texasattorneygeneral.gov/files/og/20060725usdoe.pdf>.

<sup>2</sup>Section 552.024(c)(2) of the Government Code authorizes a governmental body to redact information protected by section 552.117(a)(1) of the Government Code without the necessity of requesting a decision under the Act if the current or former employee or official to whom the information pertains timely chooses not to allow public access to the information. *See* Gov't Code § 552.024(c)(2). 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 under the Act. *See id.* § 552.147(b).

information is excepted from disclosure under sections 552.101, 552.116, and 552.117 of the Government Code.<sup>3</sup> We have considered the claimed exceptions and reviewed the submitted 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.” Gov’t Code § 552.101. This section encompasses section 21.355(a), which provides “[a] document evaluating the performance of a teacher or administrator is confidential.” Educ. Code § 21.355(a). Additionally, the Third Court of Appeals has concluded that 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.” *Abbott v. N. E. 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. See Open Records Decision No. 643 at 3 (1996). We also determined a “teacher” for purposes of section 21.355 means a person who (1) is required to and does in fact hold a teaching certificate under subchapter B of chapter 21 of the Education Code or a school district teaching permit under section 21.055 and (2) is engaged in the process of teaching, as that term is commonly defined, at the time of the evaluation. See *id.* at 4.

The district asserts some of the information evaluates the performance of teachers who held the appropriate certificates for purpose of section 21.355 at the times of the evaluations. However, we find the district has not established any of the submitted information consists of “[a] document evaluating the performance of a teacher or administrator” as contemplated by section 21.355. Accordingly, we conclude the district has not established the submitted information is confidential under section 21.355, and the district may not withhold any of it under section 552.101 on that ground.

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. In *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.—El Paso 1992, writ denied), the court addressed the applicability of the common-law privacy doctrine to files of an investigation of allegations of sexual harassment. However, the ruling in *Ellen* was applicable to investigations involving workplace harassment. Upon review, we find the district has not established any of the submitted information constitutes a sexual harassment

---

<sup>3</sup>Although the district also raises section 552.102 of the Government Code, it has not submitted arguments explaining how this exception applies to the submitted information. Therefore, we presume the district no longer asserts this exception. See Gov’t Code §§ 552.301, .302.

investigation in the employment context of the district for purposes of *Ellen*. Accordingly, we conclude the ruling in *Ellen* is not applicable to the submitted information, and the district may not withhold any portion of it under section 552.101 of the Government Code on that basis.

Section 552.116 of the Government Code provides as follows:

(a) An audit working paper of an audit of the state auditor or the auditor of a state agency, an institution of higher education as defined by Section 61.003, Education Code, a county, a municipality, a school district, a hospital district, or a joint board operating under Section 22.074, Transportation Code, including any audit relating to the criminal history background check of a public school employee, is excepted from the requirements of Section 552.021. If information in an audit working paper is also maintained in another record, that other record is not excepted from the requirements of Section 552.021 by this section.

(b) In this section:

(1) ‘Audit’ means an audit authorized or required by a statute of this state or the United States, the charter or an ordinance of a municipality, an order of the commissioners court of a county, the bylaws adopted by or other action of the governing board of a hospital district, a resolution or other action of a board of trustees of a school district, including an audit by the district relating to the criminal history background check of a public school employee, or a resolution or other action of a joint board described by Subsection (a) and includes an investigation.

(2) ‘Audit working paper’ includes all information, documentary or otherwise, prepared or maintained in conducting an audit or preparing an audit report, including:

(A) intra-agency and interagency communications; and

(B) drafts of the audit report or portions of those drafts.

Gov’t Code § 552.116. For purposes of section 552.116, a school district must establish an audit is authorized by a resolution or other action of a board of trustees of the school district. The submitted information consists of letters from the district notifying the Texas Education Agency (“TEA”) of alleged improper conduct of educators. The district states this information pertains to “matters that, per section 21.006 of the Texas Education Code and per [s]ection 249.14 [of title 19] of the Texas Administrative Code, fall within SBEC’s and [TEA]’s jurisdiction and authority.” We note section 249.14 of title 19 of the Texas Administration Code authorizes TEA, and not the district, to investigate an educator. *See*

Educ. Code § 21.041; 19 T.A.C. ch. 249. In addition, the district has provided no arguments establishing the information at issue constitutes working papers of an audit conducted by the district pursuant to section 21.006 of the Education Code. *See* Educ. Code § 21.006(b-1). Thus, the district may not withhold any of the submitted information under section 552.116 of the Government Code.

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 that 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). 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 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). Therefore, the district may only withhold information 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 on which the request for this information was made. Such information may not be withheld for an individual who did not make a timely election. We have marked information that the district must withhold if section 552.117(a)(1) applies.

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).<sup>4</sup> *See* Gov’t Code § 552.137(a)-(c). Section 552.137 does not apply to a government employee’s work e-mail address because such an address is not that of the employee as a “member of the public,” but is instead the address of the individual as a government employee. The e-mail address at issue does not appear to be of a type specifically excluded by section 552.137(c), and the district does not inform us a member of the public has affirmatively consented to its release. Therefore, the district must withhold the e-mail address we have marked under section 552.137 of the Government Code.

To conclude, the district must withhold information we have marked under section 552.117(a)(1) of the Government Code if the employee at issue made a request for confidentiality under section 552.024 of the Government Code prior to the date on which the request for this information was made. The district must also withhold the information we

---

<sup>4</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body. *See* Open Records Decision Nos. 481 at 2 (1987), 480 at 5 (1987).

have marked under section 552.137 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](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,



James L. Coggeshall  
Assistant Attorney General  
Open Records Division

JLC/akg

Ref: ID# 625950

Enc. Submitted documents

c: Requestor  
(w/o enclosures)