



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 5, 2010

Ms. Mia M. Martin
General Counsel
Richardson Independent School District
400 South Greenville Avenue
Richardson, Texas 75081-4198

OR2010-00103

Dear Ms. Martin:

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# 366180.

The Richardson Independent School District (the "district") received a request for information related to a specified district employee. You state that the district has released some responsive information. You also state that the district has redacted social security numbers pursuant to section 552.147(b) of the Government Code.¹ You claim that a portion of the submitted information is not subject to the Act and that the remainder of the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.117, 552.130, 552.136, and 552.137 of the Government Code.² We have considered your arguments and reviewed the submitted representative sample of the requested information.³

¹Section 552.147(b) 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.

²Although your brief also raises section 552.139 of the Government Code, you do not explain how this exception applies to any of the submitted information. *See* Gov't Code § 552.301(e). Therefore, we understand you to have withdrawn your argument under section 552.139.

³We 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

Initially, you assert that the employee identification number at issue is not subject to the Act. In Open Records Decision No. 581 (1990), this office determined that 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. You have previously informed our office that the district's employees use their employee identification numbers solely to access the district's confidential computer databases. Based on this representation and our review, we agree that the submitted district employee identification number does not constitute public information under section 552.002 of the Government Code. Accordingly, this information is not subject to the Act and need not be released to the requestor.⁴

Section 552.101 of the Government Code excepts from public 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 made confidential by other statutes, including 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. This office has interpreted this section to apply to any document that evaluates, as that term is commonly understood, the performance of a teacher or administrator. Open Records Decision No. 643 (1996). This office has determined that a teacher is someone who is required to hold and does hold a certificate or permit required under chapter 21 of the Education Code and is teaching at the time of the evaluation. *See id.*

You state that the individual whose evaluations are at issue held a teacher's certificate or permit under chapter 21 of the Education Code and was performing the functions of a teacher at the time of the evaluations. Accordingly, we agree that the district must withhold the submitted evaluations under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code.

Section 552.101 also encompasses the common-law right of privacy, which protects information that is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976). Section 552.102(a) of the Government Code excepts from public disclosure "information in a personnel file, the

to the extent that those records contain substantially different types of information than that submitted to this office.

⁴You "inquire whether [the district] may rely on [Open Records Decision No. 2008-01744 (2008)] as a previous determination . . . that its Employee Identification Numbers do not constitute public information." Previous determinations issued by this office address whether information falls within one of the Act's exceptions, not whether information is subject to the Act. *See* Gov't Code § 552.301(a), Open Records Decision No. 673 (2001).

disclosure of which would constitute a clearly unwarranted invasion of personal privacy[.]” Gov’t Code § 552.102(a). Section 552.102 is applicable to information that relates to public officials and employees. *See* Open Records Decision No. 327 at 2 (1982) (anything relating to employee’s employment and its terms constitutes information relevant to person’s employment relationship and is part of employee’s personnel file). The privacy analysis under section 552.102(a) is the same as the common-law privacy standard under section 552.101. *See Hubert v. Harte-Hanks Tex. Newspapers, Inc.*, 652 S.W.2d 546, 549-51 (Tex. App.—Austin 1983, writ ref’d n.r.e.) (addressing statutory predecessor). We will therefore consider the applicability of your common-law privacy claim under section 552.101 together with your claim under section 552.102(a).

The types of information considered intimate or embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *See id.* at 683. This office has found that personal financial information not relating to a financial transaction between an individual and a governmental body is excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 600 (1992), 545 (1990). Upon review, we agree that the information we have marked is highly intimate or embarrassing and not of legitimate public concern. However, we find that the remainder of the submitted information is not highly intimate or embarrassing or is of legitimate public concern. Accordingly, the district must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy, but may not withhold any of the remaining information at issue on that basis or under section 552.102(a) of the Government Code.

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 employee’s name, courses taken, and degree obtained, the district must withhold the submitted 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, social security number, and family member information of a current or former official or employee of a governmental body who requests that the information be kept confidential under section 552.024 of the Government Code. Section 552.117 also encompasses a personal cellular telephone number, provided that a governmental body does not pay for the cell phone service. *See* Open Records Decision No. 506 at 5-6 (1988) (Gov’t Code § 552.117 not applicable to cellular telephone numbers paid for by governmental body and intended for official use). 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 official or 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 inform us that one employee whose information is at issue timely elected under section 552.024 to keep her information private. However, you do not inform us whether the other employees whose information is at issue also made timely elections under section 552.024. Therefore, we must rule conditionally. The district must withhold the information marked under section 552.117(a)(1) to the extent the involved employees timely elected under section 552.024 to keep their information confidential and to the extent the marked cellular telephone numbers were not paid for by the district; conversely, to the extent the involved employees did not make timely election under section 552.024 or the marked cellular telephone numbers were paid for by the district, the district may not withhold the marked information under section 552.117.

Section 552.130 of the Government Code exempts from disclosure "information [that] relates to . . . a motor vehicle operator's or driver's license or permit issued by an agency of this state[.]"⁵ Gov't Code § 552.130(a)(1). Accordingly, the district must withhold the Texas driver's license information we have marked pursuant to section 552.130.

Section 552.137 of the Government Code states that "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under [the Act]," unless the owner of the e-mail address has affirmatively consented to its public disclosure. *Id.* § 552.137(a)-(b). The types of e-mail addresses listed in section 552.137(c) may not be withheld under this exception. *See id.* § 552.137(c). The submitted e-mail address does not appear to be of a type listed in section 552.137(c), and you do not indicate that the owner of this e-mail address has consented to release. Therefore, the district must withhold the marked e-mail address under section 552.137.

In summary, (1) the submitted employee identification number is not subject to the Act and need not be released, (2) the district must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy, (3) the district must withhold the submitted teacher evaluations under section 552.101 in conjunction with section 21.355 of the Education Code, (4) with the exception of the employee's name, courses taken, and degree obtained, the district must withhold the

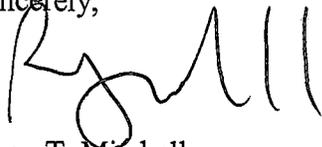
⁵We note this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including a copy of a Texas driver's license under section 552.130 and an e-mail address of a member of the public under section 552.137, without the necessity of requesting an attorney general decision.

submitted transcripts pursuant to section 552.102(b) of the Government Code, (5) the district must withhold the information marked under section 552.117(a)(1) to the extent the involved employees timely elected under section 552.024 to keep their information confidential and to the extent the marked cellular telephone numbers were not paid for by the district, (6) the district must withhold the Texas driver's license information we have marked pursuant to section 552.130, (7) district must withhold the marked e-mail address under section 552.137, and (8) the district must release the remainder of the submitted 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.oag.state.tx.us/open/index_orl.php, 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 must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Ryan T. Mitchell
Assistant Attorney General
Open Records Division

RTM/rl

Ref: ID# 366180

Enc. Submitted documents

cc: Requestor
(w/o enclosures)