



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 8, 2010

Ms. Kimberly M. James
Bracewell & Giuliani LLP
711 Louisiana Street, Suite 2300
Houston, Texas 77002-2770

OR2010-00393

Dear Ms. James:

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# 366750.

The Spring Independent School District (the "district"), which you represent, received a request for a specified employee's personnel file. You claim portions of the submitted information are excepted from disclosure under sections 552.101, 552.102, and 552.117 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note 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. Gov't Code § 552.147(b). Accordingly, we need not address your argument under section 552.102 against disclosure of the submitted social security number.

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." *Id.* § 552.101. Section 552.101 encompasses information protected 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. Open Records Decision No. 643.

The submitted information demonstrates that the individual whose evaluations are at issue held a teacher's certificate and was functioning as a teacher at the time of the evaluations. Accordingly, 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 552.102(a) of the Government Code excepts from public 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). 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).

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 also 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 find the information we have marked is highly intimate or embarrassing and not of legitimate public concern. However, we find that the remainder of the information you have marked under section 552.102 is not highly intimate or embarrassing or is of legitimate public concern. Accordingly, the district must withhold the information we have marked under section 552.102(a) of the Government Code, but may not withhold any of the remaining information at issue on that basis.

Next, you claim that portions of the submitted transcripts are excepted under section 552.102(b) of the Government Code. Section 552.102(b) excepts from disclosure all information from transcripts of professional public school employees 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 in 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. 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 the employee whose information is at issue made a timely election under section 552.024 to keep her information confidential. Therefore, the district must withhold the information we have marked under section 552.117(a)(1) of the Government Code. However, the remaining information at issue that you seek to withhold under section 552.117(a)(1) consists of a business telephone number; this information is not confidential under section 552.117(a)(1) and, therefore, the district may not withhold it on that basis.

We note that section 552.130 of the Government Code excepts from disclosure "information [that] relates to . . . a motor vehicle operator's or driver's license or permit issued by an agency of this state[.]"¹ Gov't Code § 552.130(a)(1). Accordingly, the district must withhold the Texas driver's license and Texas driver's license number we have marked pursuant to section 552.130.²

In summary, (1) the district may withhold the submitted social security number under section 552.147 of the Government Code, (2) 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, (3) the district must withhold the information we have marked under section 552.102(a) of the Government Code, (4) with the exception of the employee's name, courses taken, and degree obtained, the district must withhold the information in the submitted transcripts pursuant to section 552.102(b) of the Government Code, (5) the district must withhold the information we have marked under section 552.117(a)(1) of the Government Code, (6) the district must withhold the Texas driver's license and Texas driver's license number we have marked pursuant to section 552.130 of the Government Code, and (7) as you raise no further exceptions against disclosure, the district must release the remainder of the submitted information.

¹The Office of the Attorney General will raise a mandatory exception, such as section 552.130, on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

²We 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 and a Texas driver's license number under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

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,

A handwritten signature in black ink, appearing to read 'R. Mitchell', written over the word 'Sincerely,'.

Ryan T. Mitchell
Assistant Attorney General
Open Records Division

RTM/sdk

Ref: ID# 366750

Enc. Submitted documents

cc: Requestor
(w/o enclosures)