



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 29, 2010

Mr. Randall J. Cook
Hardy & Atherton
One American Center, Suite 70
909 East South East Loop 323
Tyler, Texas 75701

OR2010-09580

Dear Mr. Cook:

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# 384736.

The Canton Independent School District (the "district"), which you represent, received a request for information regarding the employment, resignation, or termination of a named former district employee. You state some of the requested information has been released with redactions made pursuant to section 552.147 of the Government Code.¹ 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.

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 information protected by other statutes. Section 21.355 of the Education Code provides "[a] document evaluating the performance of a teacher or administrator is confidential." Educ. Code § 21.355. This office has interpreted section 21.355 to apply to any document that evaluates, as that term is commonly

¹Section 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* Gov't Code § 552.147(b).

understood, the performance of a teacher or administrator. See Open Records Decision No. 643 (1996). In Open Records Decision No. 643, this office also concluded that an administrator is someone who is required to hold and does hold a certificate required under chapter 21 of the Education Code and is administering at the time of his or her evaluation. *Id.* at 4. You contend the information submitted at Tab 4 constitutes evaluations for the purposes of section 21.355 of the Education Code. You state the district employee at issue was performing the functions of an administrator at the time of the evaluations. However, we are unable to determine if the district employee at issue was required to and did hold an administrator's certificate under subchapter B of chapter 21 of the Education Code at the time of the evaluations. Thus, if the district employee at issue held an administrator's certificate and was performing the functions of an administrator at the time of the evaluations, the district must withhold the information submitted at Tab 4 under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code. If this employee did not hold the requisite certificate, the information at issue is not confidential under section 21.355 and may not be withheld under section 552.101 on that basis.

Section 552.101 also encompasses information made confidential by federal law. This office has held that section 6103(a) of title 26 of the United States Code renders tax return information confidential. Attorney General Opinion H-1274 (1978) (tax returns); Open Records Decision No. 600 (1992) (W-4 forms), 226 (1979) (W-2 forms). Section 6103(b) defines the term "return information" as a taxpayer's "identity, the nature, source, or amount of his income[.]" See 26 U.S.C. § 6103(b)(2)(A). Federal courts have construed the term "return information" expansively to include any information gathered by the Internal Revenue Service regarding a taxpayer's liability under title 26 of the United States Code. See *Mallas v. Kolak*, 721 F. Supp. 748, 754 (M.D.N.C. 1989), *aff'd in part*, 993 F.2d 1111 (4th Cir. 1993). Accordingly, the district must withhold the W-4 form we have marked under section 552.101 of the Government Code in conjunction with section 6103(a) of title 26 of the United States Code.²

Section 552.101 also encompasses the doctrine of common-law privacy, which protects information if it (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is 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. This office has found personal financial information relating only to an individual ordinarily satisfies the first requirement of the test for common-law privacy, but there is a legitimate public interest in the essential facts about a financial transaction

²As our ruling for this information is dispositive, we do not address your submitted argument for this information. We also note Open Records Decision No. 684 (2009) authorizes a governmental body to withhold W-4 forms under section 552.101 in conjunction with section 6103(a) of title 26 of the United States Code without the necessity of requesting an attorney general decision.

between an individual and a governmental body. *See* Open Records Decision Nos. 600 (finding personal financial information to include designation of beneficiary of employee's retirement benefits and optional insurance coverage; choice of particular insurance carrier; direct deposit authorization; and forms allowing employee to allocate pretax compensation to group insurance, health care, or dependent care), 545 (1990) (deferred compensation information, participation in voluntary investment program, election of optional insurance coverage, mortgage payments, assets, bills, and credit history). We have marked portions of the remaining information that are highly intimate or embarrassing and not of legitimate public interest. Accordingly, the district must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

You claim portions of the information submitted at Tab 5 are excepted under section 552.102(b) of the Government Code. This section excepts from disclosure all information in 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). Upon review, we agree the district must withhold the submitted transcripts at Tab 5, apart from the employee's name, the courses taken, and the degree obtained, under section 552.102(b) of the Government Code.

Section 552.117(a)(1) excepts from disclosure the home address, home telephone number, social security number, and family member information of a current or former employee of a governmental body who requests this information be kept confidential under section 552.024. *See* Gov't Code § 552.117(a)(1). Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). You have provided a copy of an election form showing the district employee whose information is at issue made a timely election to keep her personal information confidential. Accordingly, the district must withhold the personal information you have marked, as well as the additional information we have marked, under section 552.117(a)(1) of the Government Code.

In summary, the district must withhold (1) the information submitted at Tab 4 under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code, if the district employee at issue held an administrator's certificate and was performing the functions of an administrator at the time of the evaluations, (2) the W-4 form we marked under section 552.101 in conjunction with section 6103(a) of title 26 of the United States Code, (3) the personal financial information we marked under section 552.101 in conjunction with common-law privacy, (4) the submitted transcripts, apart from the employee's name, the courses taken, and the degree obtained, under section 552.102(b) of the Government Code, and (5) the information you marked and the additional information we marked under section 552.117(a)(1) of the Government Code. The remaining information must be released.

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,



Matt Entsminger
Assistant Attorney General
Open Records Division

MRE/tp

Ref: ID# 384736

Enc. Submitted documents

c: Requestor
(w/o enclosures)