



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 20, 2010

Mr. Robert Russo
Walsh, Anderson, Brown, Gallegos & Green, P.C.
For Northside Independent School District
P.O. Box 460606
San Antonio, Texas 78246

OR2010-10811

Dear Mr. Russo:

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# 387305.

The Northside Independent School District (the "district"), which you represent, received a request for eight categories of information related to a named district employee, including the employee's personnel file and certain e-mails to and from the employee. You state that you will withhold the employee's social security number under section 552.147 of the Government Code.¹ You claim that the remainder of the submitted information is excepted from disclosure under sections 552.101 and 552.102 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that you have only submitted a transcript and evaluations for the employee. Thus, to the extent any additional responsive information existed and was maintained by the district on the date it received the request, we assume you have released such information. If you have not released any such information, you must do so at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body

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. Gov't Code § 552.147(b).

concludes that no exceptions apply to requested information, it must release information as soon as possible).

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. Section 552.101 of the Government Code encompasses information made confidential by other statutes, such as 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). In Open Records Decision No. 643, we determined that 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 contends that some of the submitted information consists of evaluations of a teacher who was required to and did hold the appropriate certificate under chapter 21 of the Education Code. While you assert that the employee carries out classroom duties that involve teaching students, we note that the employee in question is not a teacher, but is instead a certified "Educational Aide I." Section 21.355 does not apply to evaluations of educational aides. *See id.* at 5 (concluding that teacher interns, trainees, and educational aides are not "teachers" for the purposes of section 21.355). Thus, the district may not withhold the submitted evaluations under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code.

Next, you claim portions of the submitted transcript are excepted from disclosure 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). Accordingly, with the exception of the district employee's name, courses taken, and degree obtained, we agree the district must withhold the submitted transcript pursuant to section 552.102(b) of the Government Code.

Finally, we note that some of the remaining information is subject to section 552.101 of the Government Code. This section also encompasses the doctrine of common-law privacy, which protects information that (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 establish the applicability of common-law privacy, both prongs of this test must be demonstrated. *Id.* at 681-82.

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. *Id.* at 683. We have marked information that is highly intimate or embarrassing and is not of legitimate public concern. This information must be withheld under section 552.101 of the Government Code in conjunction with common-law privacy. As you raise no other exception to disclosure, the remaining information must be released.

In summary, with the exception of the district employee's name, courses taken, and degree obtained, we agree the district must withhold the submitted transcript pursuant to section 552.102(b) of the Government Code. We have marked the information that must be withheld under section 552.101 of the Government Code in conjunction with common-law privacy. The remaining submitted 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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/dls

Ref: ID# 387305

Enc. Submitted documents

c: Requestor
(w/o enclosures)