



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 24, 2010

Ms. Bertha Bailey Whatley
Chief Legal Counsel
Fort Worth Independent School District
100 North University Drive
Fort Worth, Texas 76107

OR2010-14526

Dear Ms. Whatley:

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# 394736.

The Fort Worth Independent School District (the "district") received a request for the following: (1) the personnel files of two named individuals, including their applications, criminal background checks, salary information, yearly evaluations, disciplinary action, and employment status; (2) any and all documents relating to the district's diversity training program for the year 2009-10; (3) information pertaining to the purported loss of specified electronic equipment; and (4) any and all reports regarding the altering of attendance records at Arlington Heights High School for the year 2009-10. We note you have redacted social security numbers under section 552.147(b) of the Government Code.¹ You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.²

Initially, we address your assertion that the district does not maintain the requested criminal history records. You state the district "no longer maintains written copies of the criminal records history of certified employees[.]" You explain that the district accesses this

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).

²We 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 to the extent that those records contain substantially different types of information than that submitted to this office.

information through the Fingerprint-based Applicant Clearinghouse of Texas and that the district's access to such information is restricted to "view only." The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990).

Next, we note you have only submitted information responsive to the first category of the request for our review. We assume, to the extent any additional responsive information existed when the district received the request for information, you have released it to the requestor. If not, then 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 concludes 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 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 section 21.355 to apply to any document that evaluates, as that term is commonly understood, the performance of a teacher or an administrator. *See* Open Records Decision No. 643 (1996). We have determined that for the purposes of section 21.355, the word "teacher" means a person who is required to, and does in fact, hold a certificate or permit required under chapter 21 of the Education Code and is teaching at the time of his or her evaluation. *Id.*

You assert the submitted information evaluates the performance of teachers who hold the appropriate certificates for the purpose of section 21.355 and were performing the functions of a teacher at the time of the evaluations. Based on your representations and our review, we agree most of the submitted information constitutes teacher evaluations subject to section 21.355. Accordingly, the district must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code. However, you have not demonstrated that any of the remaining submitted information evaluates the performance of a teacher for purposes of section 21.355; thus none of the remaining information at issue may be withheld on that basis.

We note the remaining submitted information consists of a college transcript subject to section 552.102(b) of the Government Code, which excepts from disclosure "a transcript from an institution of higher education maintained in the personnel file of a professional public school employee."³ *Gov't Code* § 552.102(b). However, section 552.102(b) further

³The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

provides, that "the degree obtained or the curriculum on a transcript in the personnel file of the employee" are not excepted from disclosure. *Id.* Thus, with the exception of the information that reveals the employee's name, the degree obtained, and the courses taken, the district must withhold the transcript we have marked under section 552.102(b). *See* Open Records Decision No.526 (1989).

In summary, the district must withhold the evaluations we have marked under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code. With the exception of the employee's name, courses taken, and degree obtained, the district must withhold the transcript we have marked under section 552.102(b) of the Government Code.

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,



Amy L.S. Shipp
Assistant Attorney General
Open Records Division

ALS/tp

Ref: ID# 394736

Enc. Submitted documents

c: Requestor
(w/o enclosures)