



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 1, 2010

Mr. Tony Resendez
Walsh, Anderson, Brown, Gallegos and Green, P.C.
P.O. Box 460606
San Antonio, Texas 78246

OR2010-16440

Dear Mr. Resendez:

On behalf of the Somerset Independent School District (the "school district"), 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# 398752.

The school district received a request for the personnel file of a certain employee, including any information regarding disciplinary action. You state the school district has released portions of the requested information to the requestor. You also state the school district will redact the social security number in the submitted information based on section 552.147 of the Government Code.¹ You claim 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.

Section 552.101 excepts from required public disclosure information considered confidential by law, either constitutional, statutory or by judicial decision. Gov't Code § 552.101. Thus, section 552.101 excepts from disclosure information made confidential by statute. We first consider your claim exhibit AG-0007 is confidential based on sections 411.0845 and 411.097(d) of the Government Code.

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. Gov't Code § 552.147(b).

Section 411.0845 of the Government Code provides in relevant part:

(a) The [Department of Public Safety (the "DPS")] shall establish an electronic clearinghouse and subscription service to provide [criminal history record information ("CHRI")] to a particular person entitled to receive [CHRI] and updates to a particular record to which the person has subscribed under this subchapter.

(b) On receiving a request for [CHRI] from a person entitled to such information under this subchapter, the [DPS] shall provide through the electronic clearinghouse:

(1) the [CHRI] reported to the [DPS] or the Federal Bureau of Investigation relating to the individual who is the subject of the request; or

(2) a statement that the individual who is the subject of the request does not have any [CHRI] reported to the [DPS] or the Federal Bureau of Investigation.

(d) The [DPS] shall ensure that the information described by Subsection (b) is provided only to a person otherwise entitled to obtain [CHRI] under this subchapter. Information collected under this section is confidential and is not subject to disclosure under [the Act].

Id. § 411.0845(a)-(b), (d). Section 411.097(b) of the Government Code provides in part that "[a] school district . . . is entitled to obtain from [DPS CHRI] maintained by [DPS] that the district . . . is required or authorized to obtain under Subchapter C, Chapter 22, Education Code, that relates to a[n] . . . employee of the district[.]" *Id.* § 411.097(b). Pursuant to section 22.083(a-1) of the Education Code, a school district is authorized to obtain CHRI from DPS's electronic clearinghouse. Educ. Code § 22.083(a-1)(1). Section 22.08391(d) of the Education Code states that any CHRI received by a school district is subject to section 411.097(d) of the Government Code. *Id.* § 22.08391(d). Section 411.097 provides in relevant part:

(d) [CHRI] obtained by a school district, charter school, private school, service center, commercial transportation company, or shared services arrangement in the original form or any subsequent form:

(1) may not be released to any person except:

(A) the individual who is the subject of the information;

(B) the [TEA];

(C) the State Board for Educator Certification;

(D) the chief personnel officer of the transportation company, if the information is obtained under Subsection (a)(2); or

(E) by court order[.]

Gov't Code § 411.097(d). Exhibit AG-0007 consists of information obtained by the district through DPS's electronic clearinghouse. Therefore, this information is confidential under section sections 411.0845 and 411.097(d) of the Government Code and excepted from required disclosure under section 552.101.

Next, we consider your claim under section 22.08391 of the Education Code for exhibit AG-0006. Section 22.08391(a) provides in relevant part:

(a) Information collected about a person to comply with this subchapter, including the person's name, address, phone number, social security number, driver's license number, other identification number, and fingerprint records:

(1) may not be released except:

(A) to comply with this subchapter;

(B) by court order; or

(C) with the consent of the person who is the subject of the information;

Educ. Code § 22.08391(a). Thus, except in the specified circumstances, section 22.08391 prohibits the release of information about a person collected in order to conduct a criminal history record search. Exhibit AG-006 is a form the school district used to collect information about an employment applicant for the purpose of conducting a criminal history record search. Consequently, we conclude section 22.08391(a) make confidential Exhibit AG-006.

You raise section 21.355 of the Education Code for exhibits AG-0008 through AG-0012. Section 21.355 provides that "[a] document evaluating the performance of a teacher or administrator is confidential." *Id.* § 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 administrator. Open Records Decision No. 643 at 3 (1996). In Open Records Decision No. 643, we determined that the word "administrator" in section 21.355 means a

person who is required to and does in fact hold an administrator's certificate under subchapter B of chapter 21 of the Education Code and is performing the functions of an administrator, as that term is commonly defined, at the time of the evaluation. *Id.* The Third Court of Appeals has held a written reprimand constitutes an evaluation for purposes of section 21.355. *See Abbott v. North East Indep. Sch. Dist.*, 212 S.W.3rd 364 (Tex. App.—Austin, 2006).

You argue the information at issue evaluates the performance of an employee who is an administrator who holds a Texas Educator Certificate. You have submitted for our review a copy of the employee's Texas Educator Certificate from the State Board for Educator Certification. After review of the information at issue, we agree the information is confidential based on section 21.355 and therefore excepted from required public disclosure under section 552.101.

Section 552.101 also encompasses the doctrine of common law privacy. Common law privacy protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The type of information considered intimate and 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. 540 S.W.2d at 683. This office has found the following types of information are excepted from required public disclosure under privacy: some kinds of medical information or information indicating disabilities or specific illnesses, *see* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps), information concerning the intimate relations between individuals and their family members, *see* Open Records Decision No. 470 (1987), and identities of victims of sexual abuse, *see* Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982).

Common law privacy also protects certain types of personal financial information. Financial information that relates only to an individual ordinarily satisfies the first element of the common law privacy test, but the public has a legitimate interest in the essential facts about a financial transaction between an individual and a governmental body. *See* Open Records Decision Nos. 600 at 9-12 (1992) (identifying public and private portions of certain state personnel records), 545 at 4 (1990) (finding common law privacy inapplicable to information regarding receipt of governmental funds or debts owed to governmental entities), 523 at 4 (1989) (distinguishing confidential background financial information individual furnished to public body from basic facts regarding particular financial transaction between individual and public body), 373 at 4 (1983) (requiring case-by-case analysis of public's interest in individual's financial information).

You contend certain payroll deductions you marked on exhibit AG-0004 and exhibit AG-0005 in its entirety are private. You state the "benefit deductions [are] assumed solely by the subject employee" and the school district is "not involved in [the] transaction or decisions" which the deductions reflect. After review of the submitted information, we agree the deductions on exhibit AG-0004 are private and excepted from disclosure under section 552.101. We have marked the documents accordingly. We also agree exhibit AG-0005 contains some private information that is excepted from disclosure under section 552.101 and have marked that exhibit accordingly. The remainder of exhibits AG-0004 and AG-0005 are not private and may not be withheld from the requestor on that basis.

You raise section 552.102(b) for portions of the employee's college transcripts. 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, "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 college transcripts pursuant to section 552.102(b) of the Government Code.

Finally, we note the submitted records include information that may be excepted from required public disclosure under section 552.117(a)(1).² 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 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 only be withheld under section 552.117(a)(1) on behalf of a current or former 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. We have marked information that may be subject to section 552.117(a)(1). Therefore, to the extent the employee timely requested confidentiality under section 552.024, the school district must withhold this information under section 552.117(a)(1) of the Government Code.

In summary, based on section 552.101, the school district must withhold the following information: exhibit AG-0006, which is confidential under Education Code section 22.08391; exhibit AG-0007, which is confidential under Government Code

²The Office of the Attorney General will raise mandatory exceptions like section 552.117 on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

sections 411.0845 and 411.097(d); exhibits AG-0008 through AG-0012, which are confidential under Education Code section 21.355; and the marked information on exhibits AG-004 and AG-0005, which is private. Based on section 552.102(b), the school district must withhold the submitted college transcripts with the exception of the employee's name, courses taken, and degree obtained. Based on section 552.117(a)(1), the school district must withhold the employee's home address, telephone number, social security number, and marked family member information if the employee timely requested confidentiality under section 552.024. The school district must release the remaining 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,



Kay Hastings
Assistant Attorney General
Open Records Division

KH/bs

Ref: ID# 398752

Enc. Submitted documents

c: Requestor
(w/o enclosures)