ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 6, 2011

Mr. John A. Kazen
Kazen, Meurer & Perez, L.L.P.
P.O. Box 6237
Laredo, Texas 78042-6237

OR2011-04770

Dear Mr. Kazen:

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# 413778.

The Laredo Independent School District (the "district"), which you represent, received a request for any and all documents relating to a named district employee. 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 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. This section encompasses information protected by other statutes. Section 21.355 of the Education Code 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 the term is commonly understood, the performance of a teacher or administrator. *See* Open Records Decision No. 643 (1993). In Open Records Decision No. 643, we determined that an "administrator" for purposes of 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. *See id.* at 4.

You state the evaluations in Exhibit A were created when the employee was a certified administrator under chapter 21 of the Education Code. You represent, and we agree, that Exhibit A contains evaluations of the employee's performance as a Principal and Assistant Principal. Thus, based on your representations and our review, we conclude these reports

are administrator evaluations for purposes of section 21.355. Accordingly, the district must withhold the Principal and Assistant Principal evaluation reports we marked under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code. Exhibit A also includes evaluation reports made when the employee held the positions of Curriculum Specialist and Assistant to Superintendent. However, you make no representation, nor are we able to discern, that at the time of these evaluations, the employee was performing the functions of an administrator. Therefore, we are unable to determine that section 21.355 is applicable to these evaluations. Accordingly, to the extent the employee was evaluated for her performance as an administrator in the Curriculum Specialist and Assistant to Superintendent evaluations, they are confidential under section 21.355 and must be withheld under section 552.101. *See* Open Records Decision No. 643 at 4 (1996). To the extent the employee was not performing the functions of an administrator at the time of the Curriculum Specialist and Assistant to Superintendent evaluations, they are not confidential under section 21.355 and may not be withheld under section 552.101. We note Exhibit A contains a 2009 Review of Performance of the employee when she held the position of Administrative Assistant to the Superintendent. The 2009 Review of Performance reflects that the employee was not being evaluated on her performance as an administrator at that time. Therefore, this document, which we marked, must be released.

You seek to withhold Exhibit D under common-law privacy. 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 established. *Id.* at 681-82. The records in Exhibit D pertain solely to the work history and work behavior of a public employee. This office has stated in numerous formal decisions that the public has a legitimate interest in the qualifications and performance of public employees. *See e.g.*, Open Records Decisions Nos. 562 at 10 (1990) (personnel file information does not involve most intimate aspects of human affairs, but in fact touches on matters of legitimate public concern), 542 (1990), 470 at 4 (1987) (public has legitimate interest in job qualifications and performance of public employees), 444 at 5-6 (1986) (public has legitimate interest in knowing reasons for dismissal, demotion, promotion, or resignation of public employees), 423 at 2 (1984) (scope of public employee privacy is narrow). Thus, the district may not withhold Exhibit D in its entirety under section 552.101 in conjunction with common-law privacy.

We note, however, that portions of the documents in Exhibit C contain the employee's financial information. This office has found there is a legitimate public interest in the essential facts about a financial transaction between an individual and a governmental body. *See generally* Open Record Decision No. 545 (1990) (financial information pertaining to receipt of funds from governmental body or debts owed to governmental body not protected

by common-law privacy). Although most of the financial information contained in Exhibit C pertains to financial transactions between the employee and the district, this office has determined that a public employee's net pay is protected by common-law privacy. *See* Attorney General Opinion GA-0572 at 3-5 (2007) (stating net salary necessarily involves disclosure of information about personal financial decisions and is background financial information about given individual that is not of legitimate concern to public). Thus, the district must withhold the net pay we marked in Exhibit C under section 552.101 of the Government Code in conjunction with common-law privacy. We also note the employee demographic sheets contained in Exhibit C list payroll deductions and benefits. This office has stated there is a legitimate public interest in an employee's participation in an insurance or retirement program funded in whole or in part by a governmental body. *See* Open Records Decision No. 600 at 9-12 (1992) (identifying public and private portions of certain state personnel records). Accordingly, records relating to such programs do not constitute confidential personal financial information. On the other hand, a public employee's allocation of part of the employee's salary to a voluntary investment, health or other program offered by the employer is a personal investment decision, and information about that decision is protected by common-law privacy. *See, e.g.,* Open Records Decision Nos. 600 (employee's designation of retirement beneficiary, choice of insurance carrier, election of optional coverages, direct deposit authorization, forms allowing employee to allocate pretax compensation to group insurance, health care or dependent care), 545 (deferred compensation information, participation in voluntary investment program, and election of optional insurance coverage). You have not identified whether the listed payroll deductions and benefits reflect mandatory participation by the employee or are the employee's voluntary financial decisions. Thus, to the extent the lists reflect the employee's voluntary allocation of her salary to optional investment, retirement, and other financial programs offered by the district, the district must withhold these deduction amounts under section 552.101 in conjunction with common-law privacy. However, to the extent the lists reflect the employee's mandatory participation in the district's retirement and investment programs, the deduction amounts are not confidential and must be released.

Next, we note some of the documents contained in Exhibits C and D include the employee's birth date. Section 552.102(a) excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." *Id.* § 552.102(a). The Texas Supreme Court recently held section 552.102(a) excepts from disclosure the dates of birth of state employees in the payroll database of the Texas Comptroller of Public Accounts. *Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex. & The Dallas Morning News, Ltd.*, No. 08-0172, 2010 WL 4910163 (Tex. Dec. 3, 2010). We have marked the birth date in Exhibits C and D that must be withheld under section 552.102(a).

You claim the employee's transcript in Exhibit B is excepted from disclosure under section 552.102(b) of the Government Code. This section excepts from disclosure all information from higher education transcripts of professional public school employees other

than the employee's name, the courses taken, and the degree obtained. *See* Gov't Code § 552.102(b); Open Records Decision No. 526 (1989). Upon review, with the exception of the name, courses taken, and degree obtained, which must be released, the district must withhold Exhibit B pursuant to section 552.102(b) of the Government Code.

We next note Exhibits A, C, and D contain documents that include the employee's social security number, home address and telephone number, and family member information. 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 employee of a governmental body who requests this information be kept confidential under section 552.024 of the Government Code.[1] *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 information. *See* Open Record 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 information. You have provided a personal information disclosure questionnaire that shows the employee elected confidentiality for her personal information prior to the district's receipt of the request for information. Thus, the district must withhold the employee's personal information we marked in Exhibits C and D under section 552.117(a)(1) of the Government Code. To the extent the evaluations contained in Exhibit A are not confidential under section 21.355 of the Education Code, the district must withhold the employee's social security number under section 552.117(a)(1).

Finally, some of the documents contained in Exhibit C include a bank routing number and bank account number belonging to the employee. Section 552.136 provides:

> (a) In this section, "access device" means a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to:
>
> (1) obtain money, goods, services, or another thing of value; or
>
> (2) initiate a transfer of funds other than a transfer originated solely by paper instrument.

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

> (b) Notwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.

Id. § 552.136(a), (b). Because the routing number and bank account number are used to obtain money or initiate a transfer of funds, they are access device numbers for purposes of section 552.136. Accordingly, the district must withhold the marked routing number and bank account number in Exhibit C under section 552.136 of the Government Code.

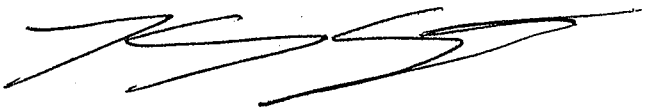
In summary, the district must withhold the Principal and Assistant Principal evaluations we marked in Exhibit A under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code. To the extent the employee was being evaluated for her performance as an administrator at the time the Curriculum Specialist and Assistant to Superintendent evaluations were created, they are confidential under section 21.355 and must be withheld under section 552.101. If the employee was not being evaluated for her performance as an administrator in these evaluations, they are not confidential under section 21.355 and must be released. The marked 2009 Review of Performance in Exhibit A must be released. The district must withhold the employee's net pay we marked in Exhibit C under section 552.101 of the Government Code in conjunction with common-law privacy. To the extent the deductions and benefits listed in the employee demographic sheets contained in Exhibit C reflect the employee's voluntary allocation of her salary to optional investment, retirement, and other financial programs offered by the district, the district must withhold these deduction amounts under section 552.101 in conjunction with common-law privacy. If the lists reflect the employee's mandatory participation in the district's retirement and investment programs, the deduction amounts are not confidential and must be released. The birth date we marked in Exhibits C and D must be withheld under section 552.102(a). With the exception of the name, courses taken, and degree obtained, which must be released, the district must withhold Exhibit B pursuant to section 552.102(b) of the Government Code. The district must withhold the employee's personal information we marked in Exhibits C and D under section 552.117(a)(1) of the Government Code. To the extent the evaluations contained in Exhibit A are not confidential under section 21.355 of the Education Code, the district must withhold the employee's social security number under section 552.117(a)(1). Lastly, the district must withhold the marked routing number and bank account number in Exhibit C under section 552.136 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,



Kenneth Leland Conyer
Assistant Attorney General
Open Records Division

KLC/eeg

Ref: ID# 413778

Enc. Submitted documents

c: Requestor
(w/o enclosures)