



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 7, 2011

Mr. Robb D. Decker
Counsel for the Marion Independent School District
Walsh, Anderson, Brown, Gallegos & Green, P.C.
P.O. Box 460606
San Antonio, Texas 78246

OR2011-08068

Dear Mr. Decker:

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# 422087.

The Marion Independent School District (the "district"), which you represent, received a request for fourteen categories of information related to district teachers. You inform us the district will redact information subject to section 552.117 of the Government Code as permitted by section 552.024(c) of the Government Code.¹ You state the district will withhold social security numbers pursuant to section 552.147 of the Government Code.² You also state the district will release some information to the requestor. You claim portions of the remaining information are 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.

¹Section 552.117(a)(1) of the Government Code excepts from disclosure the home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024 of the Government Code. Section 552.024 of the Government Code authorizes a governmental body to withhold information subject to section 552.117 without requesting a decision from this office if the employee or official chooses not to allow public access to the information. *See* Gov't Code §§ 552.117(a)(1), .024(c).

²Section 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 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 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 administrator. *See* Open Records Decision No. 643 (1996). In that opinion, this office also concluded a teacher is someone who is required to hold and does hold a certificate required under chapter 21 of the Education Code and is teaching at the time of his or her evaluation. *Id.* In addition, the court has concluded a written reprimand constitutes an evaluation for purposes of section 21.355 because “it reflects the principal’s judgment regarding [a teacher’s] actions, gives corrective direction, and provides for further review.” *North East Indep. Sch. Dist. v. Abbott*, 212 S.W.3d 364 (Tex. App.—Austin 2006, no pet.).

You state AG-0013 through AG-0050 are evaluations of teachers who held the appropriate teacher certifications and were functioning as teachers at the time of the evaluations. Based on your representations and our review of the information at issue, we conclude AG-0013 through AG-0050 consist of teacher evaluations for the purposes of section 21.355, and the district must withhold AG-0013 through AG-0050 under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code.

Next, you claim AG-0001 through AG-0012 and AG-0055 are excepted from disclosure under section 552.102(b) of the Government Code. Section 552.102(b) 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. Gov’t Code § 552.102(b); Open Records Decision No. 526 (1989). We agree that the district must withhold the named employee’s educational transcripts, which are labeled AG-0001 through AG-0012 under section 552.102(b) of the Government Code, except for the information that reveals the employee’s name, the degree obtained, and the courses taken.³ However, you have also marked grade information under section 552.102(b) on a portion of an employment application. Because this document is not a transcript from an institute of higher education, we conclude section 552.102(b) is inapplicable to it. Consequently, no portion of this document, which is labeled AG-0055, may be withheld under section 552.102(b) of the Government Code.

Next, you claim AG-0052 contains the date of birth of a public employee, which is excepted from disclosure under section 552.102(a) of the Government Code. Section 552.102(a) excepts from disclosure “information in a personnel file, the disclosure of which would

³As our ruling is dispositive, we need not address your remaining argument against the disclosure of this information.

constitute a clearly unwarranted invasion of personal privacy.” Gov’t Code § 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). Having carefully reviewed the information at issue, we agree the information you have marked in AG-0052 must be withheld under section 552.102(a) of the Government Code.

In summary, the district must withhold AG-0013 through AG-0050 under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code. Except for the information that reveals the employees’ names, the degrees obtained, and the courses taken, the district must withhold the employees’ educational transcripts, which are labeled AG-0001 through AG-0012 under section 552.102(b) of the Government Code. The district must withhold the information you have marked in AG-0052 under section 552.102(a) 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,



Sarah Casterline
Assistant Attorney General
Open Records Division

SEC/eb

Ref: ID# 422087

Enc. Submitted documents

c: Requestor
(w/o enclosures)