



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 15, 2011

Ms. Elisabeth A. Donley
Law Offices of Robert E. Luna, P.C.
For the Lewisville Independent School District
4411 North Central Expressway
Dallas, Texas 75205

OR2011-08444

Dear Ms. Donley:

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# 420614.

The Lewisville Independent School District (the "district"), which you represent, received a request for a named teacher's personnel file and her class rosters for a specified period of time. You state some of the information has been or will be released to the requestor. You also state the district has redacted information pursuant to the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code.¹ You further state the district has redacted information pursuant to sections 552.024 and 552.147 of the

¹The United States Department of Education Family Policy Compliance Office (the "DOE") has informed this office that FERPA does not permit state and local educational authorities to disclose to this office, without parental consent, unredacted, personally identifiable information contained in education records for the purpose of our review in the open records ruling process under the Act. The DOE has determined that FERPA determinations must be made by the educational authority in possession of the education records. We have posted a copy of the letter from the DOE to this office on the Attorney General's website: <http://www.oag.state.tx.us/open/20060725usdoe.pdf>.

Government Code and Open Records Decision No. 684 (2009).² You claim portions of the submitted 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.

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 exception encompasses information other statutes make confidential. 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 an administrator. *See* Open Records Decision No. 643 (1996). Additionally, a court has concluded that a written reprimand constitutes an evaluation for purposes of section 21.355 as 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.). In Open Records Decision No. 643, we concluded that a "teacher" for purposes of section 21.355 means a person who (1) is required to and does in fact hold a certificate or permit required under chapter 21 of the Education Code and (2) is teaching at the time of his or her evaluation. *Id.*

You assert Exhibit B consists of written evaluations and reprimands that are confidential under section 21.355. You state, and provide documentation showing, the named teacher held the appropriate certification at the time of the evaluations. Based on your representations and our review, we agree that some of the documents in Exhibit B, which we have marked, constitute evaluations as contemplated by section 21.355. Accordingly, the district must withhold the documents we have marked in Exhibit B under section 552.101 in conjunction with section 21.355 of the Education Code. However, you have not demonstrated that any of the remaining information in Exhibit B evaluates the performance of a teacher for purposes of section 21.355; thus, none of the remaining information in Exhibit B may be withheld on that basis under section 552.101.

²We note section 552.024(c) of the Government Code authorizes a governmental body to redact, without the necessity of requesting a decision from this office, the home address, home telephone number, social security number, and family member information of a current or former employee who properly elected to keep his information confidential. Gov't Code § 552.024(c). We also note section 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 id.* § 552.147(b). Furthermore, Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including a Form I-9 and attachments under section 552.101 of the Government Code in conjunction with section 1324a of title 8 of the United States Code, a Texas driver's license number under section 552.130 of the Government Code, and personal e-mail addresses under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

Section 552.101 also encompasses section 825.507 of the Government Code, which provides in relevant part:

(a) Records of a participant that are in the custody of the [Teachers] [R]etirement [S]ystem (the "retirement system") or of an administrator, carrier, attorney, consultant, or governmental agency acting in cooperation with or on behalf of the retirement system are confidential and not subject to public disclosure in a form that would identify an individual and are exempt from the public access provisions of Chapter 552, except as otherwise provided by this section[.]

...

(c) The records of a participant remain confidential after release to a person as authorized by this section. This section does not prevent the disclosure or confirmation, on an individual basis, of the status or identity of a participant as a member, former member, retiree, deceased member or retiree, beneficiary, or alternate payee of the retirement system.

...

(g) In this section, "participant" means a member, former member, retiree, annuitant, beneficiary, or alternate payee of the retirement system.

Gov't Code § 825.507(a), (c), (g). You state the information you have marked in Exhibit C identifies a participant of the retirement system. We note section 825.507(c) does not prevent disclosure of the identity of a participant of the retirement system. *See id.* § 825.507(c). Upon review, we find you have failed to demonstrate the information you have marked in Exhibit C consists of records of a participant in the retirement system that are in the custody of the district in cooperation with the retirement system. Accordingly, we have no basis to conclude the information you have marked in Exhibit C is confidential under section 825.507 of the Government Code, and the district may not withhold it on that basis under section 552.101 of the Government Code.

Section 552.101 of the Government Code also encompasses section 21.048 of the Education Code, which provides, in relevant part, the following:

The results of an examination administered under this section are confidential and are not subject to disclosure under Chapter 552, Government Code, unless:

- (1) the disclosure is regarding notification to a parent of the assignment of an uncertified teacher to a classroom as required by Section 21.057; or
- (2) the educator has failed the examination more than five times.

Educ. Code § 21.048(c-1). The information you have marked in Exhibit D consists of ExCET exam results. You further state subsections 21.048(c-1)(1) and (2) are not applicable in this instance. Based on your representations and our review, we agree the district must withhold the information you have marked in Exhibit D under section 552.101 of the Government Code in conjunction with section 21.048(c-1) of the Education Code.

You next claim that Exhibits E and F contain the date of birth of a district 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 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.*, 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 Exhibits E and F must be withheld under section 552.102(a) of the Government Code.

Next, you claim the marked portions of the transcript in Exhibit E 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). Upon review, we agree the district must withhold the information you have marked in the transcript in Exhibit E under section 552.102(b) of the Government Code.

In summary, the district must withhold the information we have marked in Exhibit B under section 552.101 in conjunction with section 21.355 of the Education Code. The district must withhold the information you have marked in Exhibit D under section 552.101 of the Government Code in conjunction with section 21.048(c-1) of the Education Code. The district must withhold the date of birth you have marked in Exhibits E and F under section 552.102(a) of the Government Code. The district must withhold the information you have marked in the transcript in Exhibit E under section 552.102(b) of the Government Code. The remaining information must be released to the requestor.

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,



Sean Nottingham
Assistant Attorney General
Open Records Division

SN/bs

Ref: ID# 420614

Enc. Submitted documents

c: Requestor
(w/o enclosures)