



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 11, 2011

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

OR2011-09732

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# 423384.

The Lewisville Independent School District (the "district"), which you represent, received a request for a named employee's personnel file, as well as all e-mails from that individual to thirteen individuals during a specified time period.¹ You state some information has been made available to the requestor. You state, as permitted by section 552.024(c) of the Government Code, you will redact information subject to section 552.117 of the Government Code.² You also state the district will redact information pursuant to section 552.147 of the

¹You state the district sought and received clarification of the instant request from the requestor. *See* Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information).

²Section 552.117 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. *See* Act of May 24, 2011, 82nd Leg., R.S., S.B. 1638, § 2 (to be codified as an amendment to Gov't Code § 552.117(a)). 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, emergency contact information, social security number, and family member information of a current or former employee who properly elected to keep his information confidential. *See* Act of May 24, 2011, 82nd Leg., R.S., S.B. 1638, § 1 (to be codified as an amendment to Gov't Code § 552.024(a)).

Government Code and Open Records Decision No. 684 (2009).³ You claim some of the requested information is not subject to the Act. Additionally, you claim some of the submitted information is excepted from disclosure pursuant to sections 552.101 and 552.102 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we address your contention the e-mails in Exhibit G are not subject to the Act. The Act is only applicable to “public information.” *See* Gov’t Code § 552.021. Section 552.002(a) defines public information as “information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business: (1) by a governmental body; or (2) for a governmental body and the governmental body owns the information or has a right of access to it.” *Id.* § 552.002(a). You state the e-mails in Exhibit G consist of personal e-mails that do not relate to the transaction of official district business. *See* Open Records Decision No. 635 (1995) (statutory predecessor not applicable to personal information unrelated to official business and created or maintained by state employee involving *de minimis* use of state resources). You further state these e-mails represent the employee’s personal use of his district e-mail account under the district’s electronic communications policy. Upon review of the e-mails in Exhibit G, we agree they do not constitute “information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business” by or for the district. *See* Gov’t Code § 552.021. Thus, we conclude the e-mails in Exhibit G are not subject to the Act, and need not be released in response to this request.

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, such as 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[.]

³We 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 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.

...

(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 B 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 B 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 B 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 C consists of teacher certification 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 C under section 552.101 of the Government Code in conjunction with section 21.048(c-1) of the Education Code.

Section 552.101 also encompasses section 21.355 of the Education Code, which provides “[a] document evaluating the performance of a teacher or administrator is confidential.” Act of May 25, 2011, 82nd Leg., R.S., H.B. 2971, § 1 (to be codified at Educ. Code § 21.355(b)).

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 D 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 the documents in Exhibit D constitute evaluations as contemplated by section 21.355. Accordingly, the district must withhold the documents in Exhibit D under section 552.101 in conjunction with section 21.355 of the Education Code.

You next claim Exhibits B, 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 B, 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 e-mails in Exhibit G are not subject to the Act, and need not be released in response to this request. The district must withhold the information you have marked in Exhibit C under section 552.101 in conjunction with 21.048(c-1) of the Education Code. The district must also withhold the information you have marked in Exhibit D under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code. The district must withhold the date of birth you have marked in Exhibits B, E, and F under section 552.102(a) of the Government Code, as well as 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,



Jennifer Burnett
Assistant Attorney General
Open Records Division

JB/dls

Ref: ID# 423384

Enc. Submitted documents

c: Requestor
(w/o enclosures)