



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 15, 2011

Mr. Humberto F. Aguilera  
Escamilla, Poneck & Cruz, L.L.P.  
P.O. Box 200  
San Antonio, Texas 78291-0200

OR2011-13371

Dear Mr. Aguilera:

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# 430035.

The United Independent School District (the "district"), which you represent, received a request for documents relating to a named former district employee. You state the district will redact the former employee's home addresses and social security number, which are subject to section 552.117 of the Government Code, under section 552.024 of the Government Code and the district will redact access device numbers under section 552.136 of the Government Code pursuant to Open Records Decision No. 684 (2009).<sup>1</sup> You claim the submitted information is excepted from disclosure under section 552.101 of the

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<sup>1</sup>Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including a bank account number and bank routing number under section 552.136 of the Government Code, without the necessity of requesting an attorney general decision. However, as of September 1, 2011, the Texas legislature amended section 552.136 to allow a governmental body to redact the information described in subsections 552.136(a) and (b) without the necessity of seeking a decision from the attorney general. *See* Act of May 30, 2011, 82<sup>nd</sup> Leg., R.S., S.B. 602, § 27 (to be codified at Gov't Code § 552.136(c)). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.136(e). *See* Act of May 30, 2011, 82<sup>nd</sup> Leg., R.S., S.B. 602, § 27 (to be codified at Gov't Code § 552.136(d), (e)). Thus, the statutory amendments to section 552.136 of the Government Code supercedes Open Records Decision No. 684 on September 1, 2011. Therefore, a governmental body may only redact information subject to subsections 552.136(a) and (b) in accordance with section 552.136, not Open Records Decision No. 684.

Government Code. We have considered the exception 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. Section 552.101 of the Government Code 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, 82<sup>nd</sup> Leg., R.S., H.B. 2971, § 1 (to be codified at Educ. Code § 21.355(a)). The Third Court of Appeals 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.” *N.E. Indep. Sch. Dist. v. Abbott*, 212 S.W.3d 364 (Tex. App.—Austin 2006, no pet.). 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). In Open Records Decision No. 643, we determined a “teacher” for purposes of section 21.355 means a person who (1) is required to and does in fact hold a teaching certificate under subchapter B of chapter 21 of the Education Code or a school district teaching permit under section 21.055 and (2) is engaged in the process of teaching, as that term is commonly defined, at the time of the evaluation. *See id.* at 4.

You assert the submitted information relates to a teacher who held the appropriate teaching certificate at the time of the evaluations. However, we note the submitted information relates to a band director’s fund-raising activities. Upon review, we find you have failed to demonstrate how the any of the information consists of an evaluation or written reprimand as contemplated by section 21.355 of the Education Code. *See* Educ. Code § 21.353 (teachers shall be appraised only on basis of classroom teaching performance and not in connection with extracurricular activities). Accordingly, we conclude the district may not withhold any of the submitted information under section 552.101 of the Government Code on the basis of section 21.355 of the Education Code.

We note a portion of the remaining information is subject to section 552.117(a)(1) of the Government Code. Section 552.117(a)(1) excepts from disclosure the home addresses and telephone numbers, emergency contact information, 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. Act of May 24, 2011, 82<sup>nd</sup> Leg., R.S., S.B. 1638, § 2 (to be codified as an amendment to Gov’t Code § 552.117(a)). Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Therefore, the district may only withhold information under section 552.117 on behalf of current or former officials or employees who made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. Therefore, if the former employee at issue timely elected to keep his

personal information confidential, the district must withhold the former employee's home address and social security number subject to section 552.117(a)(1) of the Government Code, which you state you will redact under section 552.024 of the Government Code, as well as the additional information we have marked under section 552.117. The district may not withhold this information under section 552.117 if the former employee did not make a timely election to keep the information confidential. The 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](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,



Mack T. Harrison  
Assistant Attorney General  
Open Records Division

MTH/em

Ref: ID# 430035

Enc. Submitted documents

c: Requestor  
(w/o enclosures)