



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 20, 2011

Ms. Elisabeth D. Nelson
Law Offices of Robert E. Luna, P.C.
4411 North Central Expressway
Dallas, Texas 75205

OR2011-18770

Dear Ms. Nelson:

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# 439441.

The Lewisville Independent School District (the "district"), which you represent, received two requests from the same requestor for 1) information regarding procedures for parents to lodge a complaint against a teacher, and 2) the personnel file, pre-employment background checks, complaints, disciplinary actions, and a copy of a specified investigation pertaining to a named teacher. You state certain information responsive to the requests, including the requested procedures, has been provided to the requestor with redactions. You state, as permitted by section 552.024(c) of the Government Code, the district has redacted information subject to section 552.117 of the Government Code.¹ You also state the district has redacted motor vehicle information in accordance with section 552.130 of the Government Code as well as Form I-9 information and personal e-mail addresses pursuant

¹Section 552.117 of the Government Code 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. Gov't Code § 552.117(a). 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 current or former employee or official chooses not to allow public access to the information. *See id.* § 552.024(c).

to Open Records Decision No. 684 (2009).² You claim that portions of the submitted information are excepted from disclosure under sections 552.101, 552.102, 552.117, 552.130, 552.137, and 552.147 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 section encompasses information protected by other statutes, such as chapter 411 of the Government Code. Chapter 411 authorizes the Texas Department of Public Safety (the “DPS”) to compile and maintain criminal history record information (“CHRI”) from law enforcement agencies throughout the state and to provide access to authorized persons to federal criminal history records. *See* Gov’t Code §§ 411.042, .087. In 2007, the Legislature enacted section 411.0845 of the Government Code, which provides in relevant part:

(a) The [DPS] shall establish an electronic clearinghouse and subscription service to provide [CHRI] to a particular person entitled to receive [CHRI] and updates to a particular record to which the person has subscribed under this subchapter.

(b) On receiving a request for [CHRI] from a person entitled to such information under this subchapter, the [DPS] shall provide through the electronic clearinghouse:

(1) the [CHRI] reported to the [DPS] or the Federal Bureau of Investigation relating to the individual who is the subject of the request; or

(2) a statement that the individual who is the subject of the request does not have any [CHRI] reported to the [DPS] or the Federal Bureau of Investigation.

...

²The Texas legislature amended section 552.130 of the Government Code effective September 1, 2011, to allow a governmental body to redact the information described in subsections 552.130(a)(1) and (a)(3) without the necessity of seeking a decision from the attorney general. *See* Gov’t Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e). 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 and personal e-mail addresses under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

(d) The [DPS] shall ensure that the information described by Subsection (b) is provided only to a person otherwise entitled to obtain [CHRI] under this subchapter. Information collected under this section is confidential and is not subject to disclosure under [the Act].

Id. § 411.0845(a)-(b), (d). Section 411.097(b) of the Government Code provides in part, “[a] school district . . . is entitled to obtain from [DPS CHRI] maintained by [DPS] that the district . . . is required or authorized to obtain under Subchapter C, Chapter 22, Education Code, that relates to a[n] . . . employee of the district[.]” *Id.* § 411.097(b). Pursuant to section 22.083(a-1) of the Education Code, a school district is authorized to obtain CHRI from DPS’s electronic clearinghouse. *See* Educ. Code § 22.083(a-1)(1). Section 22.083(a-1) also authorizes a school district to obtain CHRI from a private entity that is a consumer reporting agency governed by the Fair Credit Reporting Act (the “FCRA”). *See id.* § 22.083(a-1)(3); *see also* 15 U.S.C. §§ 1681a(f) (defining “consumer reporting agency”).

Section 22.08391(d) of the Education Code states any CHRI received by a school district is subject to section 411.097(d) of the Government Code. Educ. Code § 22.08391(d). Section 411.097 provides in relevant part:

(d) [CHRI] obtained by a school district, charter school, private school, service center, commercial transportation company, or shared services arrangement in the original form or any subsequent form:

(1) may not be released to any person except:

(A) the individual who is the subject of the information;

(B) the [TEA];

(C) the State Board for Educator Certification;

(D) the chief personnel officer of the transportation company, if the information is obtained under Subsection (a)(2); or

(E) by court order[.]

Gov’t Code § 411.097(d). You assert the first report in Exhibit B consists of CHRI obtained from DPS in accordance with chapter 22 of the Education Code. You assert the second report in Exhibit B consists of CHRI obtained from a private entity that is a consumer reporting agency governed by the FCRA, in accordance with chapter 22 of the Education Code. Based on your representations and our review, we agree the reports in Exhibit B constitute CHRI for the purposes of chapter 411. Accordingly, the district must withhold

Exhibit B under section 552.101 of the Government Code in conjunction with sections 411.0845 and 411.097(d) of the Government Code.³ *See id.* § 411.097; *see also* Educ. Code § 22.08391(d) (stating CHRI received by school district under subchapter C of chapter 22 of Education Code is subject to section 411.097(d) of Government Code).

Section 552.101 also encompasses section 21.355 of the Education Code, which provides that “[a] document evaluating the performance of a teacher or administrator is confidential.” Educ. Code § 21.355(a). This office has interpreted this section to apply to any document that evaluates, as that term is commonly understood, the performance of a teacher or administrator. Open Records Decision No. 643 at 3 (1996). In Open Records Decision No. 643, we determined that for purposes of section 21.355, the word “teacher” means a person who is required to and does in fact hold a teaching certificate under subchapter B of chapter 21 of the Education Code and who is engaged in the process of teaching, as that term is commonly defined, at the time of the evaluation. *See id.* at 4. We further determined that “teacher interns, teacher trainees, librarians, educational aids and counselors cannot be teachers or administrators for purposes of section 21.355.” *See id.* at 5. The employee in question is certified as an “Educational Aide II.” Thus, we find you have not shown how the named district employee is certified as a teacher and therefore have not shown the submitted information evaluates the performance of a teacher for the purposes of section 21.355. Accordingly, the district may not withhold Exhibit C under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code.

You claim Exhibit D is subject to section 552.102(b), which excepts from disclosure higher education transcripts of professional public school employees, but does not except the employee’s name, the courses taken, and the degree obtained from disclosure. Gov’t Code § 552.102(b); *see also* Open Records Decision No. 526 (1989). Upon review, with the exception of the employee’s name, courses taken, and degree obtained, we find the district must withhold the transcript we have marked under section 552.102(b) of the Government Code. However, the remaining information in Exhibit D does not consist of a higher education transcript. Therefore, the district may not withhold the remaining information under section 552.102(b).

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 remaining information, we agree the information you have marked in Exhibits D and E must be withheld under section 552.102(a) of the Government Code.

³As our ruling is dispositive, we need not address your remaining arguments against disclosure for the information in Exhibit B.

Section 552.117 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. 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). Thus, information may be withheld under section 552.117(a)(1) only 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 the information. Information may not be withheld under section 552.117(a)(1) on behalf of a current or former employee who did not timely request under section 552.024 the information be kept confidential. Therefore, to the extent the named individual timely requested confidentiality under section 552.024, the district must withhold the personal information you have marked in Exhibits D and E under section 552.117(a)(1). Conversely, to the extent she did not make a timely election under section 552.024, the district may not withhold this information under section 552.117(a)(1) of the Government Code.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's or driver's license or permit, motor vehicle title, or registration issued by an agency of Texas, another state, or another country is excepted from public release. Gov't Code § 552.130(a). The district must withhold the driver's license number you have marked in Exhibit E under section 552.130 of the Government Code.

Section 552.137 provides, "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under [the Act]," unless the owner of the e-mail address has affirmatively consented to its release or the e-mail address is specifically excluded by subsection (c). *Id.* § 552.137(a)–(c). Upon review, the district must withhold the e-mail address you have marked in Exhibit E under section 552.137 of the Government Code, unless the owner of the e-mail address has affirmatively consented to its release.

You also raise section 552.147 of the Government Code for some of the remaining information. This section provides "[t]he social security number of a living person is excepted" from required public disclosure under the Act. *Id.* § 552.147. To the extent section 552.117 of the Government Code does not apply to the social security number you have marked in Exhibits D and E, the district may withhold the social security number under section 552.147 of the Government Code.

In summary, the district must withhold Exhibit B under section 552.101 in conjunction with sections 411.0845 and 411.097(d) of the Government Code. With the exception of the employee's name, courses taken, and degree obtained, the district must withhold the transcript we have marked under section 552.102(b) of the Government Code. The district must withhold the information you have marked under section 552.102(a), the driver's

license number you have marked under section 552.130, and the email address you have marked, unless the owner has consented to its release, under section 552.137 of the Government Code. To the extent the named individual timely requested confidentiality under section 552.024, the district must withhold the named individual's marked personal information under section 552.117(a)(1) of the Government Code. If the named individual did not timely elect confidentiality under section 552.024, the district may withhold the social security number you have marked under section 552.147 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,



Michelle R. Garza
Assistant Attorney General
Open Records Division

MRG/ag

Ref: ID# 439441

Enc. Submitted documents

c: Requestor
(w/o enclosures)