



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 16, 2012

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

OR2012-03910

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# 447849.

The Lewisville Independent School District (the "district") received a request for the personnel file of a named employee. You state the district has released or will release some of the information. You state the district will redact information pursuant to sections 552.024, 552.130, and 552.147 of the Government Code; Open Records Decision No. 684 (2009); and the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232g.¹ You claim the submitted information is excepted from disclosure under

¹Section 552.024 of the Government Code permits a governmental body to withhold information subject to section 552.117 of the Government Code, which pertains to a person who has made a proper election, without seeking a ruling from this office. *See* Gov't Code § 552.024(c)(2). Section 552.130 of the Government Code permits a governmental body to redact certain motor vehicle record information without seeking a ruling from this office. *See id.* § 552.130(c). Section 552.147 of the Government Code permits 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. *See id.* § 552.147(b). Open Records Decision No. 684 serves as a previous determination to all governmental bodies authorizing them to withhold certain 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 copy of a Texas driver's license under section 552.130 of the Government Code, and an e-mail address of a member of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision. *See* Open Records Decision No. 684 (2009). The United States Department of Education Family Policy Compliance Office (the

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. Section 552.101 encompasses section 22.08391 of the Education Code. Subchapter C of chapter 22 of the Education Code addresses criminal history records of school district employees and volunteers. Section 22.08391 provides in part:

(a) Information collected about a person to comply with this subchapter, including the person’s name, address, phone number, social security number, driver’s license number, other identification number, and fingerprint records:

(1) may not be released except:

(A) to comply with this subchapter;

(B) by court order; or

(C) with the consent of the person who is the subject of the information;

(2) is not subject to disclosure as provided by [the Act]; and

(3) shall be destroyed by the requestor or any subsequent holder of the information not later than the first anniversary of the date the information is received.

Educ. Code § 22.08391(a). Thus, except in the specified circumstances, section 22.08391 prohibits the release of information about a person collected in order to conduct a criminal history record search. You state Exhibit B-1 is a form the district used to collect information about an employment applicant for purposes of conducting a criminal history record search. Accordingly, we conclude Exhibit B-1 must be withheld under section 552.101 of the Government Code in conjunction with section 22.08391 of the Education Code.

“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>.

Section 552.101 of the Government Code also encompasses section 21.048 of the Education Code, which addresses teacher certification examinations. Section 21.048(c-1) provides:

The results of an examination administered under this section are confidential and are not subject to disclosure under [the Act] 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.

Id. § 21.048(c-1). You explain Exhibit B-2 contains teacher certification examination results. You inform us that subsections 21.048(c-1)(1) and (2) are not applicable. Accordingly, the district must withhold the information you have marked in Exhibit B-2 under to section 552.101 of the Government Code in conjunction with section 21.048(c-1) of the Education Code.

Section 552.101 of the Government Code also encompasses the Medical Practice Act (the “MPA”), subtitle B of title 3 of the Occupations Code. Section 159.002 of the MPA provides in part:

(b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.

(c) A person who receives information from a confidential communication or record as described by this chapter, other than a person listed in Section 159.004 who is acting on the patient’s behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

Occ. Code § 159.002(b)–(c). This office has concluded the protection afforded by section 159.002 extends only to records created by either a physician or someone under the supervision of a physician. *See* Open Records Decision Nos. 487 (1987), 370 (1983), 343 (1982). Medical records must be released on receipt of the patient’s signed, written consent, provided the consent specifies (1) the information to be covered by the release, (2) the reasons or purposes for the release, and (3) the person to whom the information is to be released. *See* Occ. Code §§ 159.004, .005. Any subsequent release of medical records must be consistent with the purposes for which the governmental body obtained the records. *See id.* § 159.002(c); Open Records Decision No. 565 at 7 (1990). Upon review, we find the information submitted as Exhibit C consists of a medical record subject to the MPA.

Accordingly, the district must withhold this information under section 552.101 of the Government Code, unless the requestor provides the proper consent required by the MPA.²

Section 552.101 of the Government Code also encompasses section 21.355 of the Education Code, which provides, “[a] document evaluating the performance of a teacher . . . is confidential.” *See* Educ. Code § 21.355(a). 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. *See* Open Records Decision No. 643 (1996). We have determined for purposes of section 21.355, the term “teacher” means a person who is required to and does in fact hold a teaching certificate or permit 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* ORD 643 at 4. 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.” *See North East Indep. Sch. Dist. v. Abbott*, 212 S.W.3d 364 (Tex. App.—Austin 2006, no pet.).

You state the information submitted as Exhibit D consists of teacher evaluations and a letter of reprimand pertaining to the named employee. You have provided a copy of this individual’s Educator Certificate, indicating she holds certification under subchapter B of chapter 21 of the Education Code. You state the individual at issue was performing the duties of a teacher at all relevant times. Based on your representations and our review of the information, we agree the information we have marked in Exhibit D is confidential under section 21.355 of the Education Code, and the district must withhold this information under section 552.101 of the Government Code. However, we note the remaining information in Exhibit D consists of a reprimand relating to the teacher’s duties as a coach. Upon review, we conclude you have failed to demonstrate how this information consists of an evaluation 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, the district may not withhold the remaining information in Exhibit D under section 552.101 of the Government Code in conjunction with section 21.355(a) of the Education Code.

Section 552.102(b) of the Government Code excepts from disclosure “a transcript from an institution of higher education maintained in the personnel file of a professional public school employee[.]” Gov’t Code § 552.102(b). This exception further provides, however, “the degree obtained or the curriculum on a transcript in the personnel file of the employee” are not excepted from disclosure. *Id.* Upon review, we agree the district must withhold the educational transcripts submitted as Exhibit E under section 552.102(b) of the Government Code, except for the information that reveals the employee’s name, the degree obtained, and

²As our ruling is dispositive, we do not address your arguments under common-law privacy for this information.

the courses taken. *See* Open Records Decision No. 526 (1989) (addressing statutory predecessor).

Section 552.102(a) of the Government Code 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 has 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.*, 354 S.W.3d 336 (2010). Having reviewed the information at issue, we agree the dates of birth you have marked must be withheld under section 552.102(a) of the Government Code.

Section 552.117 of the Government Code excepts from disclosure the home address of a former or current employee of a governmental body who timely requests this information be kept confidential under section 552.024 of the Government Code.³ Gov’t Code § 552.117(a). To the extent the employee at issue timely elected to keep her home address confidential, the district must withhold this information, which we have marked, under section 552.117(a)(1) of the Government Code. If the employee at issue did not make a timely election to keep this information confidential, the district may not withhold the information at issue under section 552.117(a)(1) of the Government Code.

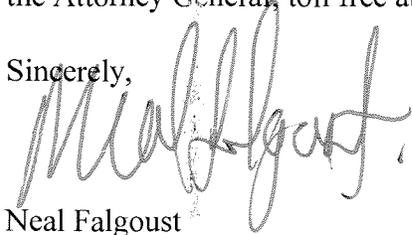
In summary, the district must withhold Exhibit B-1 under section 552.101 of the Government Code in conjunction with section 22.08391 of the Education Code. The district must withhold Exhibit B-2 under section 552.101 of the Government Code in conjunction with section 21.048 of the Education Code. The district must withhold Exhibit C under section 552.101 of the Government Code in conjunction with the MPA, unless the district receives proper consent for release under the MPA. The district must withhold the information we marked in Exhibit D under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code. With the exception of information that reveals the employee’s name, the degree obtained, and the courses taken, the district must withhold Exhibit E under section 552.102(b) of the Government Code. The district must withhold the dates of birth you have marked under section 552.102(a) of the Government Code. To the extent the employee at issue timely elected to keep her home address confidential, the district must withhold the information we marked under section 552.117(a)(1) of the Government Code. The remaining information must be released.

³The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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,



Neal Falgoust
Assistant Attorney General
Open Records Division

NF/ag

Ref: ID# 447849

Enc. Submitted documents

c: Requestor
(w/o enclosures)