



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 10, 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

OR2012-05094

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# 450102.

The Lewisville Independent School District (the "district"), which you represent, received a request for the personnel records of a named employee. You state you will make some information available to the requestor. You state you will redact certain information under sections 552.024 and 552.130.¹ You further state you will redact social security numbers under section 552.147 of the Government Code certain information under Open Records

¹Section 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 this information confidential. Gov't Code § 552.024(c); *see id.* § 552.024(c-1) (requestor may appeal governmental body's decision to withhold information under section 552.024(c) to attorney general), .024(c-2) (governmental body withholding information pursuant to section 552.024(c) must provide certain notice to requestor). Section 552.130(c) of the Government Code authorizes a governmental body to redact, without the necessity of requesting a decision from this office, the motor vehicle record information described in subsections 552.130(a)(1) and (a)(3). *See id.* § 552.130(c); *see also id.* § 552.130(d)-(e) (requestor may appeal governmental body's decision to withhold information under section 552.130(c) to attorney general and governmental body withholding information pursuant to section 552.130(c) must provide certain notice to requestor).

Decision No. 684 (2009).² 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 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 21.048 of the Education Code 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 consists of teacher certification exam results. You 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 under 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 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

²Section 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 an attorney general decision under the Act. *See id.* § 552.147(b). Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including 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 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.

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 Abbott v. North East Indep. Sch. Dist.*, 212 S.W.3d 364 (Tex. App.—Austin 2006, no pet.).

You state the information submitted as Exhibit C consists of teacher evaluations and letters of reprimand pertaining to the named employee. You have provided a copy of this individual’s educator certificate, indicating he holds certification under subchapter B of chapter 21 of the Education Code. You state the individual at issue performed the duties of a teacher and the duties of a coach. Based on your representations and our review of the information, we find the information we have marked in Exhibit C 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 C consists of reprimands relating to the teacher’s duties as a coach. Upon review, we conclude you have failed to demonstrate how this information consists of evaluations 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 C 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 D under section 552.102(b) of the Government Code, except for the information that reveals the employee’s name, the degree obtained, and the courses taken. *See* Open Records Decision No. 526 (1989) (addressing statutory predecessor).³

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 in Exhibit E must be withheld under section 552.102(a) of the Government Code.

³As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

In summary, the district must withhold the information you have marked in Exhibit B under section 552.101 of the Government Code in conjunction with section 21.048 of the Education Code. The district must withhold the information we marked in Exhibit C 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 D under section 552.102(b) of the Government Code. The district must withhold the dates of birth you have marked in Exhibit E under section 552.102(a) 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,



Jennifer Burnett
Assistant Attorney General
Open Records Division

JB/dls

Ref: ID# 450102

Enc. Submitted documents

c: Requestor
(w/o enclosures)