



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 25, 2012

Mr. Ivan F. Perez  
Jones, Galligan, Key & Lozano, L.L.P.  
For Sharyland Independent School District  
P.O. Drawer 1247  
Weslaco, Texas 78599-1247

OR2012-05905

Dear Mr. Perez:

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# 451685.

The Sharyland Independent School District (the "district"), which you represent, received a request for the former superintendent's entire personnel file. You state you have released some information to the requestor. You claim the submitted information is excepted from disclosure under sections 552.101, 552.102, and 552.117 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 section 21.355 of the Education Code. Section 21.355 provides, in part, 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 (1996). We also determined that an "administrator" for purposes of section 21.355 means a person who (1) is required to and does in fact hold an administrator's certificate under subchapter B of chapter 21 of the Education Code and (2) is performing the functions of an administrator, as that term is commonly defined, at the time of the evaluation. *Id.* at 4. In addition, the court 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.).

You state the submitted evaluation pertains to the individual named in the request, and evaluates his performance as Assistant Superintendent for Business and Operations. You explain the information at issue is an evaluation of administrative and professional staff. You further explain the named individual was employed by the district as an administrator when his performance was evaluated. The submitted information reflects the named individual held the appropriate certification under subchapter B of the Education Code at the time of the evaluation. Based on your representations and our review of the information issue, we find the district must withhold the submitted evaluation, which we have marked, under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code.

You claim the submitted college transcripts are subject to section 552.102(b) of the Government Code, which exempts from disclosure all information in transcripts of a professional public school employee 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). Thus, with the exception of the employee’s name, courses taken, and degree obtained, which we have marked for release, the district must withhold the submitted college transcripts under section 552.102(b) of the Government Code.<sup>1</sup>

You seek to withhold some of the remaining information under section 552.117(a)(1) of the Government Code, which exempts 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 timely request that this information be kept confidential under section 552.024 of the Government Code. Gov’t Code § 552.117(a). We note section 552.117 encompasses personal cellular telephone numbers, provided the cellular telephone service is not paid for by a governmental body. *See* Open Records Decision No. 506 at 5-6 (1988) (section 552.117 not applicable to cellular telephone numbers paid for by governmental body and intended for official use). Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for information is made. *See* Open Records Decision No. 530 at 5 (1989). Therefore, the district may only withhold information under section 552.117(a)(1) on behalf of current or former officials or employees who made a request for confidentiality under section 552.024 prior to the date of the governmental body’s receipt of the request for information. Information may not be withheld under section 552.117(a)(1) on behalf of a current or former official or employee who did not timely request under section 552.024 that the information be kept confidential. We have marked additional information that might be subject to section 552.117(a)(1). However, we are unable to determine if some of the information pertains to current or former district

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<sup>1</sup>As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

employees or officials. Therefore, to the extent the individuals whose information is at issue are current or former district employees or officials who timely requested confidentiality under section 552.024, the district must withhold the information it has marked, as well as the additional information we have marked, under section 552.117(a)(1) of the Government Code. However, the district may only withhold the marked cellular telephone number if the district did not pay for the cellular telephone service.

To the extent the individual named in the request did not timely elect confidentiality under section 552.024 of the Government Code, you seek to withhold his home addresses and telephone number, cellular telephone number, and social security number under section 552.101 of the Government Code. Section 552.101 also encompasses the doctrine of common-law privacy, which protects information if it (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. The type of information considered intimate or embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. We note the information at issue is not the type of information that has been found to be highly intimate or embarrassing and of no legitimate public concern. *See* Open Records Decision Nos. 554 at 3 (1990) (public disclosure of an individual's home address and telephone number is not an invasion of privacy), 455 at 7 (1987) (home addresses and telephone numbers do not qualify as "intimate aspects of human affairs"). Accordingly, we find you have failed to demonstrate any of the information at issue is highly intimate or embarrassing and not of legitimate public concern. Therefore, the district may not withhold any of the remaining information under section 552.101 of the Government Code on this basis.

In summary, the district must withhold the submitted evaluation, which we have marked, under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code. With the exception of the employee's name, courses taken, and degree obtained, which we have marked for release, the district must withhold the submitted college transcripts under section 552.102(b) of the Government Code. To the extent the individuals whose information we have marked are current or former district employees or officials who timely requested confidentiality under section 552.024 of the Government Code, the district must withhold the information it has marked, as well as the additional information we have marked, under section 552.117(a)(1) of the Government Code.<sup>2</sup> However, the district may only withhold the cellular telephone number you have marked if the district did not pay for the cellular telephone service. The remaining information must be released.

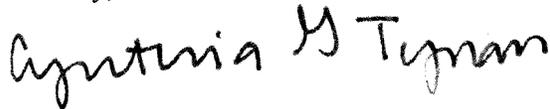
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<sup>2</sup>Regardless of the applicability of section 552.117(a)(1) of the Government Code, section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. Gov't Code § 552.147.

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,

A handwritten signature in black ink that reads "Cynthia G. Tynan". The signature is written in a cursive style with a large initial "C".

Cynthia G. Tynan  
Assistant Attorney General  
Open Records Division

CGT/em

Ref: ID# 451685

Enc. Submitted documents

c: Requestor  
(w/o enclosures)