



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 6, 2012

Mr. Stephen E. Dubner  
For Pilot Point Independent School District  
Law Office of Stephen E. Dubner  
3000 South Stemmons Freeway  
Lake Dallas, Texas 75065

OR2012-17811

Dear Mr. Dubner:

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# 470249.

The Pilot Point Independent School District (the "district"), which you represent, received a request for all personnel and campus records related to a named individual. You state you will release some information to the requestor. We note you have redacted information pursuant to sections 552.024, 552.130(c), and 552.147(b) of the Government Code.<sup>1</sup> You claim portions of the submitted information are excepted from disclosure under sections 552.101, 552.102, and 552.137 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

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<sup>1</sup>Section 552.024 of the Government Code authorizes a governmental body to redact information protected by section 552.117(a)(1) of the Government Code without the necessity of requesting a decision under the Act if the current or former employee or official to whom the information pertains timely chooses not to allow public access to the information. See Gov't Code § 552.024(c)(2). Section 552.130 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). Section 552.147(b) of the Government Code authorizes a governmental body to withhold a living person's social security number without requesting a decision under the Act. *Id.* § 552.147(b).

Code § 552.101. This section encompasses information protected by other statutes, including section 1324a of title 8 of the United States Code. Section 1324a governs I-9 forms and their related documents. This section provides an I-9 form and “any information contained in or appended to such form, may not be used for purposes other than for enforcement of this chapter” and for enforcement of other federal statutes governing crime and criminal investigations. *See* 8 U.S.C. § 1324a(b)(5); *see also* 8 C.F.R. § 274a.2(b)(4). Release of the submitted I-9 form in this instance would be “for purposes other than enforcement” of the referenced federal statutes. Accordingly, we conclude the submitted I-9 form, which we marked, is confidential pursuant to section 1324a of title 8 of the United States Code and must be withheld under section 552.101 of the Government Code.

Section 552.101 also encompasses section 21.048 of the Education Code, which 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). Upon review, we find the portions of Exhibit 3 we have marked reflect the results of an examination administered under section 21.048 of the Education Code. We have no indication subsections 21.048(c-1)(1) and (2) are applicable in this instance. Accordingly, the district must withhold the information we have marked under section 552.101 in conjunction with section 21.048(c-1) of the Education Code.<sup>2</sup>

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.” *Id.* § 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 or an administrator. *See* Open Records Decision No. 643 (1996). We have 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. You contend the information in Exhibit 4 constitutes evaluations of a former teacher of the district. You state the teacher held the appropriate

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<sup>2</sup>As our ruling is dispositive, we need not address your argument against disclosure of this information.

certificate at the time of the evaluations. Based on your representations and our review, we conclude the information contained in Exhibit 4 is confidential under section 21.355 of the Education Code and must be withheld under section 552.101.<sup>3</sup>

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 find the district must withhold the educational transcript we have marked 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). However, we note the remaining information you seek to withhold under section 552.102(b) is contained in an employment application. We find the district has failed to demonstrate this information consists of a transcript from an institution of higher education maintained in the personnel file of a professional public school employee. Accordingly, the district may not withhold any of the remaining information under section 552.102(b) of the Government Code.

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. *See Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex.*, 354 S.W.3d 336 (Tex. 2010). Upon review, we find the district must withhold the date of birth we have marked under section 552.102(a) of the Government Code. However, you have failed to demonstrate the applicability of section 552.102(a) to the remaining information at issue. Thus, the district may not withhold any of the remaining information under section 552.102(a).

Section 552.137 of the Government Code excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body,” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). Gov’t Code § 552.137(a)-(c). Accordingly, the district must withhold the e-mail addresses you have marked and the address we have marked under section 552.137 of the Government Code, unless the owners of the addresses have affirmatively consented to their release. *See id.* § 552.137(b).

In summary, the district must withhold the submitted I-9 form we have marked under section 552.101 in conjunction with section 1324a of title 8 of the United States Code and

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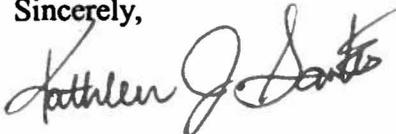
<sup>3</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

the information we have marked under section 552.101 in conjunction with section 21.048(c-1) of the Education Code. The district must withhold the information contained in Exhibit 4 under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code. The district must withhold the educational transcript we have marked 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. The district must withhold the date of birth we have marked under section 552.102(a) of the Government Code. The district must withhold the e-mail addresses you have marked and the e-mail address we have marked under section 552.137 of the Government Code, unless the owners of the addresses have affirmatively consented to their release.<sup>4</sup> The remaining information must be released.<sup>5</sup>

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,



Kathleen J. Santos  
Assistant Attorney General  
Open Records Division

KJS/dls

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<sup>4</sup>Open Records Decision No. 684 (2009) is a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including an e-mail address of a member of the public under section 552.137 of the Government Code and an I-9 form and attachments under section 552.101 in conjunction with section 1324a of title 8 of the United States Code, without the necessity of requesting an attorney general decision.

<sup>5</sup>We note the information being released contains a social security number. As previously noted, 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 an attorney general decision under the Act. See Gov't Code § 552.147(b).

Ref: ID# 470249

Enc. Submitted documents

c: Requestor  
(w/o enclosures)