



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 21, 2012

Mr. Orlando Juarez, Jr.  
Counsel for United Independent School District  
Escamilla, Poneck & Cruz  
216 West Village Boulevard, Suite 202  
Laredo, Texas 78041

OR2012-20709

Dear Mr. Juarez:

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# 474974.

The United Independent School District (the "district"), which you represent, received a request for the personnel file of a named educator. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.102 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

As you acknowledge, the district failed to meet the statutory deadlines imposed by section 552.301 of the Government Code. *See* Gov't Code § 552.301(b). Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of the Act results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 319 (1982). The presumption that information is public under section 552.302 can be overcome by demonstrating that the information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). You raise

sections 552.101 and 552.102 of the Government Code, which can provide compelling reasons to withhold information. Accordingly, we will address the applicability of these sections to 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). You state the information in Exhibit B 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 find the information we have marked in Exhibit B is confidential pursuant to section 21.048(c-1) of the Education Code, and must be withheld under section 552.101 of the Government Code on that basis. However, we find no portion of the remaining information in Exhibit B consists of the results of examinations administered under section 21.048. Therefore, the remaining information in Exhibit B may not be withheld under section 552.101 of the Government Code in conjunction with section 21.048(c-1) of the Education 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." *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 claim the information in Exhibit C consists of confidential teacher evaluations under section 21.355. We understand the information at issue pertains to an individual who was employed by the district as a teacher when her performance was evaluated. You do not inform us, however, whether the teacher at issue held the appropriate certificate under

chapter 21 of the Education Code when the information at issue was created. Therefore, we must rule conditionally. The district must withhold the information we have marked in Exhibit C under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code to the extent the teacher at issue held the appropriate certificate under chapter 21 of the Education Code at the time the information at issue was created. However, to the extent the teacher at issue did not hold the appropriate certificate under chapter 21 at the time the information at issue was created, the information at issue is not confidential under section 21.355 and may not be withheld under section 552.101 on that basis. We note a portion of the remaining information in Exhibit C pertains to the teacher in her capacity as a coach. Therefore, we find you have failed to demonstrate how this information constitutes an evaluation of the performance of a teacher or an administrator for the purposes of 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). Further, we find you have failed to demonstrate how any portion of the remaining information in Exhibit C, consisting of observation waiver forms and teacher self-report forms, constitutes an evaluation for the purposes of section 21.355. Accordingly, the district may not withhold any of the remaining information in Exhibit C under section 552.101 on the basis of section 21.355 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 transcript in Exhibit D under section 552.102(b), 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).

In summary, the district must withhold the information we have marked in Exhibit B under section 552.101 of the Government Code in conjunction with section 21.048(c-1) of the Education Code. The district must withhold the information we have marked in Exhibit C if the teacher at issue held the appropriate certificate under chapter 21 of the Education Code at the time the information at issue was created. The district must withhold the educational transcript in Exhibit D under section 552.102(b), except for the information that reveals the employee’s name, the degree obtained, and the courses taken. 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](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, appearing to read "Kristi L. Wilkins". The signature is fluid and cursive, with the first letters of each word being capitalized and prominent.

Kristi L. Wilkins  
Assistant Attorney General  
Open Records Division

KLW/ag

Ref: ID# 474974

Enc. Submitted documents

c: Requestor  
(w/o enclosures)