



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 8, 2013

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

OR2013-05580

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# 483483.

The United Independent School District (the "district"), which you represent, received a request for all documents related to a named district employee. You claim portions of the submitted information are 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.

Initially, we note you have redacted information from the submitted documents. We understand the district has redacted personal information subject to section 552.117 pursuant to section 552.024 of the Government Code.<sup>1</sup> However, you have also redacted a name and date of birth. Pursuant to section 552.301 of the Government Code, a governmental body that seeks to withhold requested information must submit to this office a copy of the information, labeled to indicate which exceptions apply to which parts of the copy, unless the governmental body has received a previous determination for the information at issue or

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<sup>1</sup>Section 552.024(c)(2) 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 to whom the information pertains timely chooses not to allow public access to the information. *See Gov't Code § 552.024(c)(2).*

statutory authority permits the information to be withheld without requesting a decision. Gov't Code § 552.301(a), (e)(1)(D). You do not assert, nor does our review of our records indicate, the district has been authorized to withhold the name and date of birth without seeking a ruling from this office. *See id.* § 552.301(a). In this instance, we can discern the nature of the information; thus, being deprived of that information does not inhibit our ability to make a ruling. However, in the future, the district must not redact information from the information it submits to this office in seeking an open records ruling, unless the information is the subject of a previous determination under section 552.301 of the Government Code or may be withheld pursuant to statutory authority. *See id.* §§ 552.301(e)(1)(D), .302. Failure to comply with section 552.301 may result in the information being presumed public under section 552.302 of the Government Code. *See id.* § 552.302.

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 21.048 of the Education Code, which addresses teacher certification examinations. Section 21.048(c-1) provides 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 assert Exhibits B and C consist of teacher certification exam results for the educator at issue. However, upon review, we find none of the information in Exhibits B and C consists of teacher certification exam results for the purposes of section 21.048. Therefore, the district may not withhold any of the information in Exhibits B and C 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 information protected by Section 21.355 of the Education Code. Section 21.355 provides, in relevant part, "[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 administrator. *See* Open Records Decision No. 643 (1996). In Open Records Decision No. 643, we determined 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 in the process of teaching, as that term is

commonly defined, at the time of the evaluation. *See id.* 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." *Abbott v. North East Indep. Sch. Dist.*, 212 S.W.3d 364 (Tex. App.—Austin 2006, no pet.).

You contend Exhibit B consists of confidential evaluations of the named teacher by the district. Based on our review, we conclude the document we have marked in Exhibit B constitutes a teacher evaluation for the purposes of section 21.355. Further, the submitted documents reveal the teacher at issue held the appropriate teaching certificate at the time of the creation of the evaluation we have marked. Therefore, the district must withhold the document we have marked under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code. However, the remaining documents in Exhibit B pertain to the named individual in his capacity as a coach. Therefore, we find you have failed to demonstrate how any of these evaluations constitutes an evaluation of the performance of a teacher 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). Therefore, the district may not withhold any of the remaining information in Exhibit B under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code.

You claim the documents in Exhibit D are excepted under section 552.102(b) of the Government Code. Section 552.102(b) of the Government Code excepts from public 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, that "the degree obtained or the curriculum on a transcript in the personnel file of the employee" are not excepted from disclosure. *Id.*; *see also* Open Records Decision No. 526 (1989). Thus, with the exception of the employee's name, courses taken, and degrees obtained, the district must withhold the submitted college transcripts in Exhibit D pursuant to 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 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 (Tex. 2010). Upon review, we find the district has failed to demonstrate how any portion of the remaining information in Exhibit B must be withheld under section 552.102(a). Accordingly, the district may not withhold any portion of Exhibit B under section 552.102(a) of the Government Code.

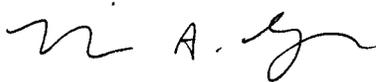
In summary, the district must withhold the information we have marked in Exhibit B under section 552.101 of the Government Code in conjunction with section 21.355 of the

Education Code. With the exception of the employee's name, courses taken, and degrees obtained, the district must withhold the submitted college transcripts in Exhibit D pursuant to section 552.102(b) 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](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,



Nicholas A. Ybarra  
Assistant Attorney General  
Open Records Division

NAY/ac

Ref: ID# 483483

Enc. Submitted documents

c: Requestor  
(w/o enclosures)