



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 23, 2013

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

OR2013-06656

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# 483406.

The Zapata County Independent School District (the "district"), which you represent, received a request for all information relating to a former district employee, including complaints, investigations, reassignments or demotions, reprimands, and disciplinary memoranda. You claim the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.115, and 552.117 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note you have redacted portions of the submitted information. 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. *See* Gov't Code §§ 552.301(a), .301(e)(1)(D). We understand the district has redacted a social security number as permitted by section 552.147(b) of the Government Code.¹ However, you do not assert, nor does our review of our records indicate, that the district is authorized to withhold the remaining redacted information without first seeking a ruling from this office. *See id.*

¹Section 552.147(b) authorizes a governmental body to redact a living person's social security number without the necessity of requesting a decision from this office. *See* Gov't Code § 552.147(b).

§ 552.301(a); Open Records Decision No. 673 (2000). As such, this information must be submitted in a manner that enables this office to determine whether the information comes within the scope of an exception to disclosure. Because we are able to discern the nature of the redacted information, we will address its public availability. In the future, the district should refrain from redacting responsive information that it submits to this office in connection with a request for 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* Gov't Code §§ 552.301(e)(1)(D), .302. Failure to do so may result in the presumption the redacted information is public. *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." *Id.* § 552.101. Section 552.101 of the Government Code encompasses section 21.048 of the Education Code, which addresses teacher certification examinations. Section 21.048(c-1) provides the following:

(c-1) 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 raise section 21.048 for the Texas Examination of Current Administrators and Teachers ("TECAT") score report in Exhibit B. We note section 21.048 of the Education Code was added by the 74th Legislature in 1995. *See* Act of May 29, 1995, 74th Leg., R.S., ch. 260, § 1 (effective May 30, 1995). The submitted TECAT score report indicates the examination at issue was administered in 1986. Thus, we conclude the examination at issue was not administered under section 21.048 of the Education Code. Accordingly, we find section 21.048(c-1) is not applicable to the information at issue, and the district may not withhold the information at issue under section 552.101 of the Government Code on that basis.

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 D consists of confidential teacher evaluations under section 21.355. We understand the information at issue pertains to an individual who was employed as a teacher when his performance was evaluated. You do not inform us, however, whether the individual 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 in Exhibit D under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code to the extent the individual 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 individual 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.

Section 552.101 also encompasses common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person and (2) not of legitimate concern to the public. *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 and 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. This office has found some kinds of medical information or information indicating disabilities or specific illnesses are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987) (prescription drugs, illnesses, operations, and handicaps). Upon review, we find a portion of the information in Exhibit C is highly intimate or embarrassing and of no legitimate public concern. Accordingly, the district must withhold the information we have marked in Exhibit C under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.115 excepts from disclosure "[a] birth or death record maintained by the bureau of vital statistics of the Texas Department of Health or a local registration official[.]" Gov't Code § 552.115(a). Section 552.115 is applicable only to information maintained by the bureau of vital statistics or local registration official. *See* Open Records Decision No. 338 (1982). The district raises section 552.115 for the submitted birth certificate in Exhibit E. However, because it is maintained by the district, the submitted birth certificate may not be withheld under section 552.115.

In the event the individual at issue did not hold the appropriate certificate under chapter 21 at the time the information in Exhibit D was created, we note you also seek to withhold the information in Exhibit D under section 552.102 of the Government Code. Additionally, we note a portion of Exhibit E is subject to section 552.102. 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 no portion of the information in Exhibit D is subject to section 552.102(a) of the Government Code, and the district may not withhold any of the information in Exhibit D on that basis. However, we have marked information in Exhibit E that must be withheld under section 552.102(a) of the Government Code.

Section 552.102(b) excepts from disclosure higher education transcripts of professional public school employees, but does not except the employee's name, the courses taken, and the degree obtained from disclosure. Gov't Code § 552.102(b); *see also* Open Records Decision No. 526 (1989). Upon review, we find none of the submitted information in the Exhibit D consists of higher education transcripts of a professional public school employee. Therefore, the district may not withhold any of the information in Exhibit D under section 552.102(b) of the Government Code.

Section 552.117(a)(1) of the Government Code excepts from disclosure the home address and telephone number, emergency contact information, social security number, and family member information of a current or former employee or official of a governmental body who requests this information be kept confidential under section 552.024 of the Government Code. *See* Gov't Code § 552.117(a)(1). Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body's receipt of the request for the information. *See* Open Records Decision No. 530 at 5 (1989). Thus, information may be withheld under section 552.117(a)(1) only on behalf of a current or former employee or official who made a request for confidentiality under section 552.024 prior to the date of the governmental body's receipt of the request for the information. Information may not be withheld under section 552.117(a)(1) on behalf of a current or former employee or official who did not timely request under section 552.024 the information be kept confidential. Therefore, to the extent the individual whose information is at issue timely requested confidentiality under section 552.024 of the Government Code, the district must withhold the information we have marked under section 552.117(a)(1) of the Government Code. Conversely, to the extent the individual at issue did not timely request confidentiality under section 552.024, the district may not withhold this information under section 552.117(a)(1).²

In summary, the district must withhold the information in Exhibit D under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code to the extent the individual 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 information we have marked in Exhibit C under section 552.101 of the Government Code

²Regardless of the applicability of section 552.117 of the Government Code, as noted above, section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number without the necessity of requesting a decision from this office. *See* Gov't Code § 552.147(b).

in conjunction with common-law privacy. The district must withhold the information we have marked in Exhibit E under section 552.102(a) of the Government Code. The district must withhold the information we have marked under section 552.117(a)(1) of the Government Code, to the extent the individual whose information is at issue timely requested confidentiality under section 552.024 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,



Kristi L. Wilkins
Assistant Attorney General
Open Records Division

KLW/bhf

Ref: ID# 483406

Enc. Submitted documents

c: Requestor
(w/o enclosures)