



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 2, 2013

Ms. Leticia D. McGowan
School Attorney
Dallas Independent School District
3700 Ross Avenue
Dallas, Texas 75204

OR2013-11298

Dear Ms. McGowan:

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# 491942 (ORR Nos. 12014 and 12028).

The Dallas Independent School District (the "district") received two requests from a requestor and the requestor's attorney for the Office of Professional Responsibility ("OPR") investigation files pertaining to the requestor and several categories of information regarding the requestor. You inform us you are releasing certain responsive information, but claim portions of the submitted information are excepted from disclosure under section 552.101 of the Government Code. We have considered the exception 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. Section 552.101 encompasses section 21.355 of the Education Code, which provides that "[a] document evaluating the performance of a teacher or administrator is confidential." Educ. Code § 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). Additionally, a court has concluded that a written reprimand constitutes an evaluation for purposes of section 21.355, as it "reflects the principal's judgment regarding [a teacher's] actions, gives corrective direction, and provides for further review." *North East Indep. Sch. Dist. v. Abbott*, 212 S.W.3d 364 (Tex. App.—Austin 2006, no pet.). In Open Records Decision

No. 643, we concluded that a “teacher” for purposes of section 21.355 means a person who (1) is required to and does in fact hold a certificate or permit required under chapter 21 of the Education Code and (2) is teaching at the time of his or her evaluation. *See* ORD 643. In Open Records Decision No. 643, this office also concluded that an administrator is someone who is required to hold and does hold a certificate required under chapter 21 of the Education Code and is administering at the time of his or her evaluation. *See id.*

You assert portions of the submitted information are confidential under section 21.355. You inform us the teachers and administrators at issue held the appropriate certification at the time of the evaluations. Based on your representations and our review, we agree some of the documents, which we have marked, constitute evaluations as contemplated by section 21.355. Accordingly, this information must be withheld under section 552.101 in conjunction with section 21.355 of the Education Code. However, you have marked evaluations of district personnel other than teachers and administrators. Thus, you have not demonstrated how any of the remaining information evaluates the performance of a teacher or administrator for purposes of section 21.355; therefore, none of the remaining information at issue may be withheld on that basis 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. *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 established. *Id.* at 681–82. The type of information considered highly 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. This office has found some kinds of medical information or information indicating disabilities or specific illnesses are excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). Upon review of the remaining information, we find the information we have marked constitutes information that is highly intimate or embarrassing and of no legitimate concern to the public. Accordingly, the district must withhold the information we have marked in the submitted information under section 552.101 of the Government Code in conjunction with common-law privacy.

Some of the remaining information may be subject to section 552.117 of the Government Code.¹ Section 552.117(a)(1) excepts from disclosure the home address and telephone

¹The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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). 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, if the individuals 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). The district may not withhold the information at issue under section 552.117 if the individuals did not make timely elections to keep their information confidential. Additionally, we note the requestor and her attorney have a right of access to the requestor's own personal information and it may not be withheld from the requestor and her attorney under section 552.117. *See* Gov't Code § 552.023(a) (person has a special right of access, beyond right of general public, to information held by governmental body that relates to person and is protected from public disclosure by law intended to protect person's privacy interests); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual asks governmental body to provide him with information concerning himself).

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). *Id.* § 552.137(a)-(c). Accordingly, the district must withhold the e-mail addresses we have marked under section 552.137 of the Government Code, unless the owners of the addresses have affirmatively consented to their release.² *See id.* § 552.137(b).

In summary, the district must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code and common-law privacy. The district must withhold the information we have marked under section 552.117 of the Government Code if the individuals whose information is at issue timely requested confidentiality pursuant to section 552.024 of the Government Code. The district must also withhold the personal e-mail addresses we have

²Open 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, without the necessity of requesting an attorney general decision.

marked under section 552.137 of the Government Code, unless the owners affirmatively consent to their public disclosure. The district must release the remaining information.³

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Britni Fabian
Assistant Attorney General
Open Records Division

BF/dls

Ref: ID# 491942

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)

³As noted, the information being released contains information to which the requestor has a right of access under section 552.023 of the Government Code. *See* Gov't Code § 552.023; *see also* Open Records Decision No. 481 at 4. However, we note section 552.024(c) 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). Thus, if the district receives another request for the submitted information from a different requestor, section 552.024(c) authorizes the district to withhold the requestor's personal information if the requestor has timely chosen not to allow access to the information.