



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 6, 2013

Ms. Holly B. Wardell
Counsel for the Greenwood Independent School District
Eichelbaum, Wardell, Hansen, Powell & Mehl, P.C.
4201 West Parmer Lane, Suite A-100
Austin, Texas 78727

OR2013-15581

Dear Ms. Wardell:

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# 498593.

The Greenwood Independent School District (the "district"), which you represent, received a request for the personnel files of two named individuals. You indicate you have released some of the information to the requestor. We understand you have redacted driver's license numbers pursuant to section 552.130(c) of the Government Code,¹ account numbers in accordance with section 552.136 of the Government Code,² and social security numbers pursuant to section 552.147 of the Government Code.³ You claim portions of the submitted

¹Section 552.130(c) of the Government Code allows a governmental body to redact the information described in subsection 552.130(a) without the necessity of seeking a decision from the attorney general. *See* Act of May 6, 2013, 83rd Leg., R.S., S.B. 458, § 1 (to be codified as amendment to Gov't Code § 552.130(c)). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See* Gov't Code § 552.130(d), (e).

²Section 552.136(c) authorizes a governmental body to redact information protected by section 552.136(b) without requesting a decision. *See id.* § 552.136(d)-(e) (requestor may appeal governmental body's decision to withhold information under section 552.136(c) to attorney general, and governmental body withholding information pursuant to section 552.136(c) must provide notice to requestor).

³Section 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 a decision from this office under the Act. *See* Gov't Code § 552.147(b).

information are excepted from disclosure under sections 552.101, 552.102, 552.117, and 552.130 of the Government Code.⁴ We have considered the exceptions you claim and reviewed the submitted representative sample of information.⁵

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 section encompasses information protected by other statutes, such as 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. In Open Records Letter No. 643 (1996), this office interpreted section 21.355 to apply to any document that evaluates, as that term is commonly understood, the performance of a teacher or administrator. ORD 643. We have determined the word “administrator” for purposes of section 21.355 means a person who (1) is required to, and does in fact, hold an administrator’s certificate under subchapter B of chapter 21 of the Education Code, and (2) is performing the functions of an administrator, as that term is commonly defined, at the time of the evaluation. *Id.*

You state Exhibit 6 constitutes evaluations concerning two former district administrators. You state, and provide documentation demonstrating, at the time of these evaluations the employees at issue were certified as administrators and were performing the functions of an administrator. Upon review, we agree Exhibit 6 is confidential under section 21.355 and must be withheld under section 552.101 of the Government Code.

Section 552.101 of the Government Code also encompasses the common-law right of 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 satisfied. *Id.* at 681-82. The types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. This office has found that personal financial information not relating to a financial transaction between an individual and a governmental body is generally intimate or embarrassing. *See* Open Records Decision No. 600 at 9-10 (1992) (employee’s designation of retirement beneficiary, choice of insurance carrier, election of optional coverages, direct deposit authorization, forms allowing employee to allocate pretax

⁴Although you raise section 552.024 of the Government Code as an exception to disclosure, we understand you to claim section 552.117 of the Government Code, as this is the proper exception for the substance of your argument. Further, although you do not raise section 552.130 of the Government Code in your brief, we understand you to raise this exception based on your markings.

⁵We assume the “representative sample” of information submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than those submitted to this office.

compensation to group insurance, health care or dependent care). However, there is a legitimate public interest in the essential facts about a financial transaction between an individual and a governmental body. *See* Open Records Decision Nos. 600 at 9 (information revealing that employee participates in group insurance plan funded partly or wholly by governmental body is not excepted from disclosure), 545 (1990) (financial information pertaining to receipt of funds from governmental body or debts owed to governmental body not protected by common-law privacy). Whether the public's interest in obtaining personal financial information is sufficient to justify its disclosure must be determined on a case-by-case basis. *See* Open Records Decision No. 373 (1983).

Upon review, we find the information you have highlighted, and the additional information we have marked, satisfy the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Therefore, the district must withhold the information you have highlighted, and the additional information we have marked, pursuant to section 552.101 in conjunction with common-law privacy.

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 agree the district must withhold the information you have highlighted under section 552.102(a).

Section 552.102(b) of the Government Code 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, with the exception of the employee's name, courses taken, and degree obtained, we find the district must withhold the transcripts in Exhibit 9 under section 552.102(b) of the Government Code.

Section 552.117(a)(1) of the Government Code excepts from disclosure the home addresses and telephone numbers, emergency contact information, social security numbers, and family member information of current or former employees of a governmental body who request that this information be kept confidential under section 552.024 of the Government Code. Gov't Code § 552.117(a)(1). Whether a particular piece of information is protected by section 552.117(a)(1) must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Therefore, a governmental body must withhold information under section 552.117 on behalf of a current or former employee only if the individual made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. The submitted information includes the election forms for the individuals whose information is at issue. You have redacted one of

the individuals' personal information pursuant to section 552.024 of the Government Code.⁶ We note you have improperly redacted a work phone number. The district must release the work phone number at issue, which we have marked for release. However, the district must withhold the remaining information you have redacted and highlighted, and the additional information we have marked, under section 552.117(a)(1).

Section 552.130 of the Government Code provides, in part, information relating to a motor vehicle operator's or driver's license or permit issued by an agency of Texas or another state or country is excepted from public release. Gov't Code § 552.130(a)(1). The district must withhold the information you have redacted, and the additional information we have marked, under section 552.130(a)(1).

We note that some of the remaining information may be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Open Records Decision No. 180 at 3 (1977). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.*; see Open Records Decision No. 109 (1975). If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit.

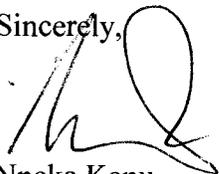
In summary, the district must withhold Exhibit 6 under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code. The district must withhold the information you have highlighted, and the additional information we have marked, under section 552.101 of the Government Code in conjunction with common-law privacy. The district must withhold the information you have highlighted under section 552.102(a) of the Government Code. With the exception of the employee's name, courses taken, and degree obtained, we find the district must withhold the transcripts in Exhibit 9 under section 552.102(b) of the Government Code. With the exception of the information we have marked for release, the district must withhold the information you have redacted and highlighted, and the additional information we have marked, under section 552.117(a)(1) of the Government Code. The district must withhold the information you have redacted, and the additional information we have marked, under section 552.130(a)(1) of the Government Code. The remaining information must be released; however, any information subject to copyright may be released only in accordance with copyright law.

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.

⁶Section 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 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).

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,

A handwritten signature in black ink, appearing to read 'Nneka Kanu', with a large, stylized flourish at the end.

Nneka Kanu
Assistant Attorney General
Open Records Division

NK/bhf

Ref: ID# 498593

Enc. Submitted documents

c: Requestor
(w/o enclosures)