



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 30, 2013

Ms. Ellen H. Spalding
Counsel for Eanes Independent School District
Rogers, Morris & Grover, L.L.P.
5718 Westheimer Road, Suite 1200
Houston, Texas 77057

OR2013-18900

Dear Ms. Spalding:

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# 504185 (EISD Request No. 4204).

The Eanes Independent School District (the "district"), which you represent, received a request for the human resources file for a named individual. We understand the district has redacted certain information under section 552.117(a)(1) of the Government Code pursuant to section 552.024 of the Government Code, bank routing and account numbers pursuant to section 552.136(c) of the Government Code, and a social security number pursuant to section 552.147(b) of the Government Code.¹ You claim the submitted information is excepted from disclosure under sections 552.101 and 552.102 of the Government Code. We

¹Section 552.024 authorizes a governmental body to redact from public release a current or former employee's home address and telephone number, emergency contact information, social security number, and family member information excepted from disclosure under section 552.117(a)(1) without the necessity of requesting a decision from this office under the Act, if the employee timely elected to withhold such information. *See* Gov't Code §§ 552.024(a)-(c), .117(a)(1). Section 552.136(c) of the Government Code authorizes a governmental body to redact, without the necessity of requesting a decision from this office, the information described in section 552.136(b). *Id.* § 552.136(c); *see also 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 certain notice to requestor). Section 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. *Id.* § 552.147(b).

have considered the exceptions you claim and reviewed the submitted representative sample of information.²

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 21.048 of the Education Code, which 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). Upon review, we find the information you have marked reflects the results of examinations administered under section 21.048 of the Education Code. You state sections 21.048(c-1)(1) and (2) are not applicable in this instance. Accordingly, the district must withhold the information you have marked under section 552.101 in conjunction with section 21.048(c-1).

Section 552.101 of the Government Code also encompasses section 21.355 of the Education Code. Section 21.355(a) 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 “administrator,” for purposes of section 21.355, means a person who is required to and does in fact hold an administrator’s certificate under subchapter B of chapter 21 of the Education Code and is performing the functions of an administrator, as that term is commonly defined, at the time of the evaluation. *Id.* at 4.

You explain the information you have marked consists of an evaluation of an administrator, who you state held the appropriate certificate for the purposes of section 21.355. Upon review of the information at issue, we find the employee at issue was acting in the capacity

²This letter ruling assumes that the submitted representative sample of information is truly representative of the requested information as a whole. This ruling does not reach, and therefore does not authorize, the withholding of any other requested information to the extent that the other information is substantially different than that submitted to this office. *See* Gov’t Code §§ 552.301(e)(1)(D), .302; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

of an administrator when the evaluation was created. Based on your representations and our review, we conclude the district must withhold the information you have marked under section 552.101 in conjunction with section 21.355.

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. 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 generally* Open Records Decision Nos. 600 at 9-10 (1992) (employee's withholding allowance certificate, designation of retirement beneficiary, choice of insurance carrier, election of optional coverages, direct deposit authorization, forms allowing employee to allocate pretax compensation to group insurance, health care or dependent care), 545 (1990) (deferred compensation information, participation in voluntary investment program, election of optional insurance coverage, mortgage payments, assets, bills, and credit history), 523 (1989) (common-law privacy protects credit reports, financial statements, and other personal financial information), 373 (1983) (sources of income not related to financial transaction between individual and governmental body protected under common-law privacy). However, there is a legitimate public interest in the essential facts about a financial transaction between an individual and a governmental body. *See* ORD 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 (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* ORD 373. Upon review, we find the information we have marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Therefore, we conclude the district must withhold the information we have marked under section 552.101 in conjunction with common-law privacy.

Section 552.102(a) 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 must withhold the date of birth you have marked under section 552.102(a).

Section 552.102(b) of the Government Code exempts from disclosure all information in transcripts of a professional public school employee other than the employee's name, the courses taken, and the degree obtained. Gov't Code § 552.102(b); Open Records Decision No. 526 (1989). Upon review, we find some of the information you have marked under section 552.102(b) is within an application for employment and does not consist of higher education transcripts of a professional public school employee. Therefore, the district may not withhold this information, which we have marked for release, on the basis of section 552.102(b). With the exception of the information we have marked for release, the district must withhold the information you have marked under section 552.102(b).

We understand the district has redacted an e-mail address under section 552.137 of the Government Code pursuant to Open Records Decision No. 684 (2009).³ We note the remaining information contains an additional e-mail address that is subject to section 552.137. Section 552.137 exempts 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). Gov't Code § 552.137(a)-(c). The e-mail address we have marked is not one of the types specifically excluded by section 552.137(c). Accordingly, the district must withhold the e-mail address we have marked under section 552.137 unless the owner of the address affirmatively consents to its release.

In summary, the district must withhold the following information: (1) the information you have marked under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code; (2) the information you have marked under section 552.101 of the Government Code in conjunction with section 21.048(c-1) of the Education Code; (3) the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy; (4) the information you have marked under section 552.102(a) of the Government Code; (5) the information you have marked under section 552.102(b) of the Government Code, with the exception of the information we have marked for release; and (6) the additional e-mail address we have marked under section 552.137 of the Government Code unless the owner of the address affirmatively consents to its release.⁴ The district must release the remaining information.

³Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold certain 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.

⁴Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold specific categories of information without the necessity of requesting an attorney general decision, including direct deposit authorization forms under section 552.101 of the Government Code in conjunction with common-law privacy and, as previously noted, an e-mail address of a member of the public under section 552.137 of the Government Code.

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,

A handwritten signature in black ink that reads "Lindsay E. Hale". The signature is written in a cursive style with a large initial "L".

Lindsay E. Hale
Assistant Attorney General
Open Records Division

LEH/tch

Ref: ID# 504185

Enc. Submitted documents

c: Requestor
(w/o enclosures)