



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 14, 2014

Mr. Chris Baumann
General Counsel
Responsive Education Solutions
P.O. Box 292730
Lewisville, Texas 75029

OR2014-06130

Dear Mr. Baumann:

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# 519689.

Responsive Education Solutions ("Responsive") received a request for the personnel records of two named school administrators. You claim the submitted information is 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 not submitted any information responsive to certain categories of information specified in the request, such as job applications, resumes, records of training, or salary. To the extent any information responsive to these portions of the request existed on the date Responsive received the instant request, we assume Responsive has released it. If Responsive has not released any such information, it must do so at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes no exceptions apply to requested information, it must release information as soon as possible).

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. Section 21.355 of the Education Code provides, in relevant part, as follows:

(a) A document evaluating the performance of a teacher or administrator is confidential.

(b) Subsection (a) applies to a teacher or administrator employed by an open-enrollment charter school regardless of whether the teacher or administrator is certified under Subchapter B.

Educ. Code § 21.355(a), (b). 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). 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." *See Abbott v. North East Indep. Sch. Dist.*, 212 S.W.3d 364 (Tex. App.—Austin 2006, no pet.).

You state Exhibits A-D consist of formal performance evaluations or reprimands that pertain to an individual who was employed by Responsive as an administrator of an open-enrollment charter school when her performance was evaluated or the reprimand was issued. Based on your representations and our review, we find Responsive must withhold Exhibits A-D under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code.

We note Exhibits F and G are subject in their entireties to section 552.130 of the Government Code.¹ Section 552.130 provides that information relating to a motor vehicle operator's or driver's license or permit issued by any agency of this state or another state or country is excepted from public release. Gov't Code § 552.130(a)(1). Upon review, we find Responsive must withhold Exhibits F and G in their entireties under section 552.130 of the Government Code.²

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

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).

²As our ruling is dispositive, we need not address your remaining argument against disclosure of this information. We note section 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* 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 id.* § 552.130(d), (e).

of personal privacy.” *Id.* § 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). We understand you to claim Exhibit E is excepted from disclosure in its entirety under section 552.102(a). Upon review, we find Responsive must withhold the date of birth we have marked under section 552.102(a) of the Government Code. However, we find Responsive has failed to demonstrate the applicability of section 552.102(a) of the Government Code to any of the remaining information. Therefore, Responsive may not withhold any of the remaining information on this basis.

We note some of the remaining information in Exhibit E is subject to section 552.117 of the Government Code. Section 552.117(a)(1) 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(a)(1) 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. Accordingly, if the individual whose information we have marked timely requested confidentiality pursuant to section 552.024, Responsive must withhold the information we have marked under section 552.117(a)(1) of the Government Code.

In summary, Responsive must withhold Exhibits A-D under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code. Responsive must withhold Exhibits F and G in their entireties under section 552.130 of the Government Code. Responsive must withhold the date of birth we have marked under section 552.102(a) of the Government Code. If the individual whose information we have marked timely requested confidentiality pursuant to section 552.024, Responsive must withhold the information we have marked under section 552.117(a)(1) of the Government Code. Responsive must release the remaining information.

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, appearing to read "Tim Neal". The signature is fluid and cursive, with the first name "Tim" being more prominent than the last name "Neal".

Tim Neal
Assistant Attorney General
Open Records Division

TN/bhf

Ref: ID# 519689

Enc. Submitted documents

c: Requestor
(w/o enclosures)