



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 13, 2014

Ms. Debra L. Goetz
Counsel for McAllen Independent School District
Atlas, Hall & Rodriguez, L.L.P.
P.O. Box 3725
McAllen, Texas 78502-3725

OR2014-08159

Dear Ms. Goetz:

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# 522769.

The McAllen Independent School District (the "district"), which you represent, received a request for (1) records listing the full name, job title, department, and salary or wage of all district employees; (2) the current contract between the district and its superintendent; (3) all school board evaluations of the district's superintendent; and (4) the personnel file of the district's superintendent. You claim the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.117, 552.130, and 552.147 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note you did not submit any information responsive to the request for records listing the full name, job title, department, and salary or wage of all district employees, or the current contract between the district and its superintendent. Further, you have not indicated that such information does not exist or that you wish to withhold any such information from disclosure. Therefore, to the extent information responsive to these aspects of the request exists, we assume the district has released it to the requestor. If the district has not released

¹Although you do not raise sections 552.117, 552.130, and 552.147 of the Government Code in your brief, we understand you to raise these exceptions based on your markings.

any such information, it must do so at this time. Gov't Code §§ 552.301(a), .302; Open Records Decision No. 664 (2000) (noting that if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible under circumstances).

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. Section 21.355(a) 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). 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 assert a portion of the information at issue consists of evaluations of an administrator, who you state held the appropriate certificate for the purposes of section 21.355. Upon review, we find the employee at issue was acting in this capacity when the evaluations were created. Based on your representations and our review, we conclude the district must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code. However, you have not demonstrated that any of the remaining information was created for the purpose of evaluating the employee. Accordingly, no portion of the remaining information may be withheld under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code.

Section 552.102(b) of the Government Code excepts from public disclosure "a transcript from an institution of higher education maintained in the personnel file of a professional public school employee[.]" Gov't Code § 552.102(b). This exception further provides, however, that "the degree obtained or the curriculum on a transcript in the personnel file of the employee" are not excepted from disclosure. *Id.*; *see also* Open Records Decision No. 526 (1989). Accordingly, with the exception of the employee's name, courses taken, and degrees obtained, the district must withhold the submitted college transcript pursuant to section 552.102(b) of the Government Code.²

²As our ruling is dispositive for the information at issue, we need not address your remaining arguments against its disclosure.

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, the district must withhold the date of birth you have marked under section 552.102(a) of the Government Code.³

Section 552.130 of the Government Code excepts from disclosure information relating to a motor vehicle operator’s or driver’s license or permit, a motor vehicle title or registration, or a personal identification document issued by an agency of this state or another state or country. Gov’t Code § 552.130(a). Accordingly, the district must withhold the information you have marked under section 552.130 of the Government Code.

Section 552.147 of the Government Code provides that “[t]he social security number of a living person is excepted from” required public disclosure under the Act. Gov’t Code § 552.147(a). Accordingly, the district may withhold the social security number you have marked under section 552.147(a) of the Government Code.⁴

In summary, the district must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code. With the exception of the name of the employee at issue, courses taken, and degrees obtained, the district must withhold the submitted college transcript pursuant to section 552.102(b) of the Government Code. The district must withhold the information you have marked under section 552.102(a) of the Government Code. The district must withhold the information you have marked under section 552.130 of the Government Code. The district may withhold the social security number you have marked under section 552.147(a) 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.texasattorneygeneral.gov/open/>

³As our ruling is dispositive for the information at issue, we need not address your remaining argument against its disclosure.

⁴As our ruling is dispositive for the information at issue, we need not address your remaining arguments against its disclosure.

[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 "JBH", written over a horizontal line.

Joseph Behrke
Assistant Attorney General
Open Records Division

JB/som

Ref: ID# 522769

Enc. Submitted documents

c: Requestor
(w/o enclosures)