



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 15, 2014

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

OR2014-12168

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# 529285.

The McAllen Independent School District (the "district"), which you represent, received two requests for information relating to a named individual. You state the district released all information responsive to one of the requests. However, you are asking for a decision regarding the second request for information relating to the personnel file of the named individual, any information relating to the named individual being placed on administrative leave, any police reports and complaints filed with the district relating to the named individual during a specified time period, and any communications relating to the named individual and the district's employees and school board during a specified time period. You claim the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.108, and 552.135 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information, a portion of which is a representative sample.¹

¹We 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.

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, “[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 administrator. *See* Open Records Decision No. 643 at 3 (1996). We have also determined a “teacher” for purposes of section 21.355 means a person who is required to and does in fact hold a certificate or permit under chapter 21 of the Education Code and is teaching at the time of the evaluation. *See* ORD 643 at 4.

You state the information you marked consists of evaluations of a teacher who held the appropriate certificate and was teaching at the time of the evaluation. Based on your representations and our review, we find the district must withhold the evaluations, which you have marked, under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code.

Section 552.101 of the Government Code also encompasses section 261.201 of the Family Code, which provides, in part, as follows:

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201(a). We note the district is not an agency authorized to conduct a chapter 261 investigation. *See id.* § 261.103 (listing agencies that may conduct child abuse investigations). However, you explain some of the submitted information, which you marked, was used or developed in an investigation of suspected child abuse by the district’s police department. Thus, we find the information at issue was used or developed in an investigation of alleged or suspected child abuse under chapter 261 of the Family Code, so as to fall within the scope of section 261.201(a). *See id.* § 261.001(1) (defining “abuse” for purposes of chapter 261 of the Family Code); *see also id.* § 101.003(a) (defining “child” for purposes of this section). You have not indicated the district’s police department has

adopted a rule that governs the release of this type of information. Therefore, we assume no such regulation exists. Accordingly, the district must withhold the information you have marked from disclosure under section 552.101 of the Government Code in conjunction with section 261.201 of the Family 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 of personal privacy.” Gov’t Code § 552.102(a). The Texas Supreme Court has considered the applicability of section 552.102, and has 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, 348 (Tex. 2010). Upon review, we find the district must withhold the employee’s date of birth at issue under section 552.102(a) of the Government Code.

Section 552.102(b) of the Government Code excepts 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). Thus, with the exception of the employee’s name, courses taken, and degree obtained, the district must withhold the transcript you have marked under section 552.102(b) of the Government Code.

In summary, the district must withhold the information you have marked 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 marked under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. The district must withhold the date of birth of the district employee at issue under section 552.102(a) of the Government Code. Finally, the district must withhold the information you have marked under section 552.102(b) of the Government Code, with the exception of the district employee’s name, courses taken, and degree obtained.

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

²As our ruling is dispositive, we need not address your remaining arguments against disclosure for this information.

providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Lauren Dahlstein
Assistant Attorney General
Open Records Division

LMD/eb

Ref: ID# 529285

Enc. Submitted documents

c: Requestor
(w/o enclosures)