



ATTORNEY GENERAL OF TEXAS
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Mr. Jaime J. Muñoz
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OR2014-12533

Dear Mr. Muñoz:

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# 529874.

The La Joya Independent School District (the "district"), which you represent, received a request for the personnel file of the district's police chief, including employee evaluations. You claim some of 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.

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, in relevant part, "[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 administrator. *See* Open Records Decision No. 643 (1996). In Open Records Decision No. 643, we 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. *See id.* at 4.

You assert some of the submitted information consists of evaluations of an administrator by the district that are confidential under section 21.355. Although the evaluations pertain to a district employee, we note the employee is the chief of police of the district's police

department. Section 21.355 protects evaluations of only teachers and administrators who held the proper certifications and were performing the functions of teachers and administrators at the times of the evaluations. You do not inform us the employee at issue was certified as an administrator by the State Board of Educator Certification and was acting as an administrator at the time evaluations were prepared. Upon review, we find the district has failed to demonstrate the applicability of section 21.355 to the information at issue. Therefore, we conclude the submitted evaluations may not 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 exempts 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). We must consider whether the Legislature intended the term “professional public school employee” in section 552.102(b) to include the district’s police chief. Section 552.102(b) does not define “professional public school employee.” When construing a statute, a court may consider the circumstances under which the Legislature enacted the statute as well as its legislative history. *Id.* § 311.023(2), (3); *City of Rockwall v. Hughes*, 246 S.W.3d 621, 626 n.6 (Tex. 2008). In 1989, the Legislature passed Senate Bill 404 (“S.B. 404”) as an amendment to the Act to include the statutory predecessor to section 552.102(b). The Senate sponsor of S.B. 404, Senator Don Henderson, stated before the Senate Committee for State Affairs the bill was a response to “people trying to get past a teacher’s degree, past a teacher’s hiring, . . . [and] past a school board’s determination that a teacher was qualified to teach[.]” Hearing on S.B. 404 Before the Senate Comm. for State Affairs, 71st Leg., R.S. (February 27, 1989) (statement of Senator Henderson) (recording available from Senate Staff Services Office). During the Senate floor debate of the bill, Senator Henderson further questioned the purpose of “any citizen being able to look at any teacher’s transcript” because “there are several other means by which we say teachers are qualified to teach in this state.” *Id.*; *see also* Debate on Tex. S.B. 404 on the Floor of the Senate, 71st Leg., R.S. (March 13, 1989) (statement of Senator Henderson describing S.B. 404 as relating to privacy of a teacher’s transcript; statement of Senator Caperton summarizing S.B. 404 as balancing public’s right to know with teacher’s right of privacy) (recording available from Senate Staff Services Office). In addition, Representative Paul J. Hilbert, the House sponsor of S.B. 404, stated during the debate on the House floor that the statute was intended to protect teachers’ college transcripts. *See* Debate on Tex. S.B. 404 on the Floor of the House, 71st Leg., R.S. (May 10 and 11, 1989) (statements of Representative Hilbert introducing S.B. 404 as applying to transcripts of teachers) (recording available from House Video/Audio Services). Therefore, we believe the legislative history of section 552.102(b) shows the Legislature enacted the predecessor statute to section 552.102(b) to protect the transcripts of only professional educators, rather than the transcripts of all public school employees. *See* Open Records Decision No. 526 (1989) (addressing predecessor statute in light of previous lack of exception for “qualifications of professional public school employees *to teach*”) (emphasis added). Thus, as you have not established the district’s police chief is an educator

for purposes of section 552.102(b), this exception is not applicable to the submitted transcripts. Accordingly, the district may not withhold any of the submitted information under section 552.102(b) of the Government Code. *See* Open Records Decision Nos. 470, 467 (1987) (public has legitimate interest in job qualifications, including college transcripts, of public employees).

We note the submitted information contains the employee's date of birth. 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."¹ 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 employee's date of birth in the submitted records under section 552.102(a) of the Government Code.

In summary, the district must withhold the employee's date of birth in the submitted records under section 552.102(a) of the Government Code. The district 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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/dls

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470(1987).

Ref: ID# 529874

Enc. Submitted documents

c: Requestor
(w/o enclosures)