



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 6, 2014

Mr. Mike Harper
Professional Standards Administrator
Killeen Independent School District
P.O. Box 967
Killeen, Texas 76540-0967

OR2014-13698

Dear Mr. Harper:

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# 532656.

The Killeen Independent School District (the "district") received a request for the personnel file of the requestor's client and the personnel file of a named individual. You state the district released some information to the requestor. We understand the district will redact social security numbers 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 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

¹Section 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 an attorney general decision under the Act. *See* Gov't Code § 552.147(b).

²We assume the "representative sample" of records 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 that submitted to this office.

Code § 552.101. Section 552.101 encompasses section 21.048 of the Education Code, which addresses teacher certification examinations. Section 21.048(c-1) provides the following:

The results of an examination administered under this section are confidential and are not subject to disclosure under [the Act], 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 agree portions of Exhibit G consist of teacher certification examination results. We have no indication subsections 21.048(c-1)(1) and (2) apply to the examination results at issue. Therefore, the district must withhold the examination results you have marked under section 552.101 of the Government Code in conjunction with section 21.048(c-1) of the Education Code.

Section 552.101 of the Government Code also encompasses section 21.355 of the Education Code, which 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 for purposes of section 21.355, “teacher” means a person who is required to and does in fact hold a teaching certificate under subchapter B of chapter 21 of the Education Code or a school district teaching permit under section 21.055, and who is engaged in the process of teaching, as that term is commonly defined, at the time of the evaluation. *See id.* at 4. We have also 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.* Additionally, the Third Court of Appeals has concluded a written reprimand constitutes an evaluation for purposes of section 21.355, as it “reflects the principal’s judgment regarding [a teacher’s] actions, gives corrective direction, and provides for further review.” *Abbott v. North East Indep. Sch. Dist.*, 212 S.W.3d 364, 368 (Tex. App.—Austin 2006, no pet.).

You claim the information in Exhibits D and E is confidential under section 21.355 of the Education Code because it consists of evaluative documentation of a certified teacher or administrator under Chapter 21. You inform us, and have submitted documentation reflecting, the individual at issue held the appropriate certifications at the time of the evaluations. Based on your representations and our review, we find the information at issue constitutes evaluations as contemplated by section 21.355. Therefore, the district must

withhold Exhibits D and E 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 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, “the degree obtained or the curriculum on a transcript in the personnel file of the employee” are not excepted from disclosure. *Id.* Upon review, we find the district must withhold the educational transcripts in Exhibit F under section 552.102(b) of the Government Code, except for the information that reveals the employee’s name, the degree obtained, and the courses taken. *See* Open Records Decision No. 526 (1989) (addressing statutory predecessor).

We note the remaining information contains information subject to section 552.117(a)(1) of the Government Code.³ 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 officials or employees of a governmental body who request that this information be kept confidential under section 552.024 of the Government Code, except as provided by section 552.024(a-1). Gov’t Code §§ 552.117(a)(1), .024. Section 552.024(a-1) of the Government Code provides, “A school district may not require an employee or former employee of the district to choose whether to allow public access to the employee’s or former employee’s social security number.” *Id.* § 552.024(a-1). Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for the information is made. *See* Open Records Decision No. 530 at 5 (1989). Therefore, the district may only withhold the home address and telephone number, emergency contact information, and family member information of a current or former official or employee of the district who made a request for confidentiality under section 552.024 prior to the date on which the request for information was made. Accordingly, if the individual whose information is at issue timely requested confidentiality pursuant to section 552.024, the district must withhold the information we have marked under section 552.117(a)(1) of the Government Code. However, the district may not withhold this information under section 552.117(a)(1) if the individual whose information is at issue did not make a timely election to keep the information confidential.

In summary, the district must withhold (1) the examination results you have marked under section 552.101 of the Government Code in conjunction with section 21.048(c-1) of the Education Code; (2) Exhibits D and E under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code; (3) the educational transcripts in Exhibit F under section 552.102(b) of the Government Code, except for the information that

³The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

reveals the employee's name, the degree obtained, and the courses taken; and (4) the information we have marked under section 552.117(a)(1) of the Government Code, if the individual whose information is at issue timely elected confidentiality under section 552.024. 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,



Miriam A. Khalifa
Assistant Attorney General
Open Records Division

MAK/akg

Ref: ID# 532656

Enc. Submitted documents

c: Requestor
(w/o enclosures)