



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 5, 2012

Ms. Elizabeth D. Nelson
Attorney for Lewisville Independent School District
Law Offices of Robert E. Luna, PC
4411 North Central Expressway
Dallas, Texas 75205

OR2012-10293

Dear Ms. Nelson:

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# 462386.

The Lewisville Independent School District (the "district"), which you represent, received a request for the personnel file of a named former district employee. You state some information will be released. You further state the district has redacted information as permitted by sections 552.130(c), 552.136(c), and 552.147 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 claimed exceptions and reviewed the submitted information.

¹Section 552.130 of the Government Code authorizes a governmental body to redact, without the necessity of requesting a decision from this office, the motor vehicle record information described in subsections 552.130(a)(1) and (a)(3). *See* Gov't Code § 552.130(c); *see also id.* § 552.130(d)-(e) (requestor may appeal governmental body's decision to withhold information under section 552.130(c) to attorney general and governmental body withholding information pursuant to section 552.130(c) must provide certain notice to requestor). Section 552.136 of the Government Code authorizes a governmental body to redact, without the necessity of requesting a decision from this office, access device numbers subject to section 552.136(b). *See id.* § 552.136(c); *see also id.* § 552.136(d)-(e) (requestor may appeal governmental body's decision to withhold information under section 552.136(c) to attorney general and governmental body withholding information pursuant to section 552.136(c) must provide certain notice to requestor). Section 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 id.* § 552.147(b).

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 exception encompasses information that other statutes make confidential, such as section 21.355 of the Education Code, which provides that “[a] document evaluating the performance of a teacher or administrator is confidential.” Educ. Code § 21.355. 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 at 3 (1996). We have further concluded that a “teacher” for purposes of section 21.355 means a person who (1) is required to, and does in fact, hold a certificate or permit required under chapter 21 of the Education Code and (2) is teaching at the time of his or her evaluation. *Id.*

You contend that Exhibit B consists of confidential evaluations of a teacher by the district. You inform us, and provide documentation showing, that the individual at issue was certified by the State Board for Educator Certification and were acting as a teacher at the time the evaluations were prepared. Based on your representations and our review, we conclude Exhibit B is confidential under section 21.355 of the Education Code and must be withheld under section 552.101 of the Government Code.

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 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.*, No. 08-0172, 2010 WL 4910163 (Tex. Dec. 3, 2010). Upon review, we find the district must withhold the dates of birth you have marked in Exhibit C under section 552.102(a).

In summary, the district must withhold Exhibit B under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code and the information you have marked in Exhibit C under section 552.102(a) of the Government Code. The remaining information in Exhibit C must be released to the requestor.

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.oag.state.tx.us/open/index_orl.php, 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 must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free at (888) 672-6787.

Sincerely,

A handwritten signature in cursive script that reads "Misty Haberer Barham".

Misty Haberer Barham
Assistant Attorney General
Open Records Division

MHB/som

Ref: ID# 462386

Enc. Submitted documents

c: Requestor
(w/o enclosures)