



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

May 11, 2015

Mr. Andrew D. Clark  
Counsel for the Huntsville Independent School District  
Powell & Leon, L.L.P.  
115 Wild Basin Road, Suite 106  
Austin, Texas 78746

OR2015-09121

Dear Mr. Clark:

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# 562886.

The Huntsville Independent School District (the "district"), which you represent, received a request for all information pertaining to district staff who have contact with the requestor's children.<sup>1</sup> We understand the district has redacted social security numbers from the submitted documents pursuant to section 552.147(b) of the Government Code.<sup>2</sup> You state the district will withhold information subject to section 552.117 of the Government Code as permitted by section 552.024(c) of the Government Code.<sup>3</sup> You state the district will release

---

<sup>1</sup>You state the district sought and received clarification of the information requested. *See* Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); *see also* *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

<sup>2</sup>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 a decision from this office. *See* Gov't Code § 552.147(b).

<sup>3</sup>Section 552.117 of the Government Code 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. *See* Gov't Code § 552.117(a)(1). Section 552.024 of the Government Code authorizes a school district to withhold the home addresses and telephone numbers, emergency contact information, and family member information of current or former officials or employees without requesting a decision from this office if the current or former employee or official chooses not to allow public access to the information. *See id.* § 552.024(a-1), (c).

some of the requested information. You claim the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.117, and 552.136 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>4</sup>

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 information protected by section 21.048 of the Education Code, which addresses teacher certification examinations. Section 21.048(c-1) provides as follows:

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). You argue the information submitted as Attachment 10 consists of exam results of district educators. Upon review, we find some of the information at issue, which we have marked, consists of results of an examination for purposes of section 21.048(c-1) of the Education Code. We have no indication subsection 21.048(c-1)(1) or (2) applies to the information at issue. Therefore, the district must withhold the information we marked under section 552.101 in conjunction with section 21.048 of the Education Code. However, you have not demonstrated how any of the remaining information at issue consists of exam results of an educator, and none of the remaining information may be withheld under section 552.101 on that basis.

Section 552.101 of the Government Code also encompasses information protected by 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 for purposes of section 21.355, the word “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 and who is in the process of teaching, as that term is commonly defined, at the time of the evaluation. *See id.* at 4. Further, in Open Records Decision No. 643, we determined an

---

<sup>4</sup>We 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.

“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 as an administrator, as that term is commonly defined, at the time of the evaluation. *Id.*

You argue the information submitted as Attachment 5 consists of confidential evaluations of district teachers by the district. You further argue the information submitted as Attachment 6 consists of confidential evaluations of district administrators by the district. You inform us the teachers and administrators at issue were certified as teachers or administrators by the State Board of Educator Certification. You also state the teachers and administrators were acting as teachers or administrators at the time the evaluations were prepared. Upon review, we find you have demonstrated the applicability of section 21.355 of the Education Code to most of the information at issue. However, we note a portion of the information in Attachment 5 evaluates a district teacher in her role as a bus driver. This information, which we have marked for release, does not consist of an evaluation of a teacher who was engaged in the process of teaching for purposes of section 21.355, and the district may not withhold it under section 552.101 of the Government Code on that basis. Accordingly, except for the information we marked for release, the district must withhold the information submitted as Attachments 5 and 6 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 the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. This office has found personal financial information not relating to a financial transaction between an individual and a governmental body is excepted from required public disclosure under common-law privacy. *See* Open Records Decision No. 600 (1992) (designation of beneficiary of employee’s retirement benefits, direct deposit authorization, and forms allowing employee to allocate pretax compensation to group insurance, health care or dependent care). Upon review, we find the information submitted as Attachment 9 satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Therefore, the district must withhold Attachment 9 under section 552.101 of the Government Code in conjunction with common-law privacy.<sup>5</sup>

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

---

<sup>5</sup>As our ruling is dispositive, we need not address your remaining arguments under sections 552.102 and 552.136 of the Government Code against disclosure of the information at issue.

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). Accordingly, the district must withhold the employee date of birth you have marked within Attachment 7 under section 552.102(a) of the Government Code.<sup>6</sup>

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). Thus, with the exception of the employees’ names, courses taken, and degrees obtained, the district must withhold the college transcripts submitted as Attachment 8 pursuant to section 552.102(b) of the Government Code.

We note the remaining information contains an e-mail address that is subject to section 552.137 of the Government Code.<sup>7</sup> Section 552.137 excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See* Gov’t Code § 552.137(a)-(c). The e-mail address at issue is not excluded by subsection (c). Therefore, the district must withhold the personal e-mail address we have marked under section 552.137 of the Government Code, unless the owner affirmatively consents to its public disclosure.

We note some of the materials at issue may be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Open Records Decision No. 180 at 3 (1977). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.*; *see* Open Records Decision No. 109 (1975). If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit.

In summary, the district must withhold the information we marked within Attachment 10 under section 552.101 in conjunction with section 21.048 of the Education Code. With the exception of the information we marked for release, the district must withhold Attachments 5 and 6 under section 552.101 of the Government Code in conjunction with section 21.355 of

---

<sup>6</sup>As our ruling is dispositive, we need not address your remaining argument under section 552.101 of the Government Code against disclosure of the information at issue.

<sup>7</sup>The 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).

the Education Code. The district must also withhold (1) Attachment 9 under section 552.101 of the Government Code in conjunction with common-law privacy; (2) the employee date of birth you marked within Attachment 7 under section 552.102(a) of the Government Code; (3) the college transcripts submitted as Attachment 8 pursuant to section 552.102(b) of the Government Code, with the exception of the employees' names, courses taken, and degrees obtained; and (4) the personal e-mail address we marked under section 552.137 of the Government Code, unless the owner affirmatively consents to its public disclosure. The district must release the remaining information; however, any information that is subject to copyright may be released only in accordance with copyright law.

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](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,



Claire V. Morris Sloan  
Assistant Attorney General  
Open Records Division

CVMS/som

Ref: ID# 562886

Enc. Submitted documents

c: Requestor  
(w/o enclosures)