



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

June 5, 2015

Mr. Benjamin Castillo  
Counsel for Lancaster Independent School District  
O'Hanlon, McCollom, & Demerath  
808 West Avenue  
Austin, Texas 78701

OR2015-11100

Dear Mr. Castillo:

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# 566178.

The Lancaster Independent School District (the "district"), which you represent, received a request for copies of applications for employment and any supporting documents for individuals holding specified positions over a specified time period. You claim portions of the submitted information are excepted from disclosure under sections 552.101, 552.102, 552.117, 552.130, 552.137 and 552.147 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted information.

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<sup>1</sup>We note the district failed to comply with the procedural requirements of section 552.301(b) of the Government Code in requesting a decision from this office with respect to its claims under sections 552.101 and 552.137 of the Government Code. *See* Gov't Code § 552.301(b) (requiring governmental body to ask for ruling and state exceptions that apply within ten business days of receiving written request). Nonetheless, sections 552.101 and 552.137 of the Government Code are mandatory exceptions that can provide compelling reasons to overcome the presumption of openness caused by failure to comply with section 552.301. *See id.* §§ 552.007, .302. Thus, we will address the applicability of these exceptions to the submitted information, notwithstanding the district's violation of section 552.301 in requesting this decision. Additionally, although you raise sections 552.021 and 552.024 of the Government Code, we note these sections are not exceptions to disclosure. *See id.* §§ 552.021, 024.

We note you have only submitted documents pertaining to one position specified in the request. However, you have not submitted any information responsive to the remaining specified positions. To the extent information responsive to the remaining portions of the request existed and was maintained by the district on the date it received the request, we assume the district has released it to the requestor. If the district has not released any such information, it must do so at this time. Gov't Code §§ 552.301(a), .302; Open Records Decision No. 664 (2000) (noting that if a governmental body concludes that no exceptions apply to the requested information, it must release information as soon as possible under circumstances).

Section 552.101 of the Government Code excepts “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 other statutes, 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(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). Additionally, a court has concluded that 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 (Tex. App.—Austin 2006, no pet.). In Open Records Decision No. 643, we determined an “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. *See* ORD 643.

You seek to withhold portions of the submitted information you have marked in Exhibit 3 under section 21.355. However, we find you have failed to demonstrate how the information at issue in Exhibit 3 consists of documents evaluating the performance of an administrator for purposes of section 21.355 of the Education Code. Accordingly, none of the information you marked may be withheld under section 552.101 of the Government Code on that basis.

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 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 dates of birth you have marked under section 552.102(a) of the Government Code.

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). 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 chief financial officer 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 the information at issue under section 552.102(b) of the Government Code. See Open Records Decision Nos. 470 (1987), 467 (1987) (public has legitimate interest in job qualifications, including college transcripts, of public employees).

Section 552.117(a)(1) of the Government Code excepts from disclosure the home address and telephone number, emergency contact information, social security number, and family member information of current or former employees or officials of a governmental body who request this information be kept confidential under section 552.024 of the Government Code, except as provided by section 552.024(a-1) of the Government Code. See Gov’t Code § 552.117(a)(1). 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). Thus, a school district may only withhold under section 552.117 the home address and telephone number, emergency contact information, and family member information of a current or former employee or official of the district who requests this information be kept confidential under section 552.024. Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body's receipt of the request for the information. *See* Open Records Decision No. 530 at 5 (1989). Thus, information may be withheld under section 552.117(a)(1) only on behalf of a current or former employee or official who made a request for confidentiality under section 552.024 prior to the date of the governmental body's receipt of the request for the information. Section 552.117 is also applicable to personal cellular telephone numbers, provided the cellular telephone service is not paid for by a governmental body. *See* Open Records Decision No. 506 at 5-6 (1988) (section 552.117 not applicable to cellular telephone numbers paid for by governmental body and intended for official use). We note some of the information you seek to withhold does not pertain to individuals who are current or former district employees or officials or does not consist of information that is subject to section 552.117. Thus, the district may not withhold this information, which we have marked for release, under section 552.117(a)(1). Therefore, with the exception of the information we have marked for release, to the extent the individuals whose information is at issue timely requested confidentiality under section 552.024 of the Government Code, the district must withhold the information you marked and the additional information we have marked under section 552.117(a)(1) of the Government Code. However, the district may only withhold the cellular telephone numbers you have marked if the cellular telephone service is not paid for by a governmental body. Conversely, to the extent the individuals at issue did not timely request confidentiality under section 552.024, the district may not withhold the information at issue under section 552.117(a)(1).

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release. *See* Gov't Code § 552.130. Accordingly, the district must withhold the motor vehicle record information you have marked under section 552.130 of the Government Code.

Section 552.137 of the Government Code 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 id.* § 552.137(a)-(c). Section 552.137 does not apply to an institutional e-mail address, the general e-mail address of a business, an e-mail address of a person who has a contractual relationship with a governmental body, an e-mail address of a vendor who seeks to contract with a governmental body, an e-mail address maintained by a governmental entity for one of its officials or

employees, or an e-mail address provided to a governmental body on a letterhead. *See id.* § 552.137(c). The e-mail addresses you have marked and the e-mail addresses we have marked are not of the types specifically excluded by subsection (c). Thus, unless the owners affirmatively consent to their public disclosure, we find the district must withhold the personal e-mail addresses you marked and we have marked under section 552.137 of the Government Code.

Section 552.147(a-1) of the Government Code provides, “The social security number of an employee of a school district in the custody of the district is confidential.” *Id.* § 552.147(a-1). The Eighty-third Texas Legislature amended section 552.147 to make the social security numbers of school district employees confidential, without such employees being required to first make a confidentiality election under section 552.024 of the Government Code. *See id.* § 552.024(a-1) (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). The legislative history of sections 552.024 (a-1) and 552.147(a-1) reflects that the protection afforded by section 552.147(a-1) was intended to extend to both current and former school district employees. *See House Comm. on Gov’t Efficiency and Reform, Bill Analysis, Tex. H.B. 2961, 83rd Leg., R.S. (2013)* (“H.B. 2961 seeks to protect the social security number of a school district employee or former employee from public disclosure.”). Thus, when reading sections 552.024(a-1) and 552.147(a-1) together, and upon review of the legislative history of these two amendments, we conclude section 552.147(a-1) makes confidential the social security numbers of both current and former school district employees. Accordingly, the district must withhold the social security numbers of the district employees you marked under section 552.147(a-1) of the Government Code.

In summary, the district must withhold the dates of birth you have marked under section 552.102(a) of the Government Code. With the exception of the information we have marked for release, to the extent the individuals whose information is at issue timely requested confidentiality under section 552.024 of the Government Code, and the cellular telephone service is not paid for by a governmental body, the district must withhold the information you marked and we have marked under section 552.117(a)(1) of the Government Code. The district must withhold the information you marked under section 552.130 of the Government Code. The district must withhold the e-mail addresses you have marked and we have marked under section 552.137 of the Government Code, unless the owners affirmatively consent to their release. The district must withhold the social security numbers you marked under section 552.147(a-1) of the Government Code. The remaining information must be released.

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,

A handwritten signature in black ink, appearing to read "Mili Gosar". The signature is fluid and cursive, with the first name "Mili" and last name "Gosar" clearly distinguishable.

Mili Gosar  
Assistant Attorney General  
Open Records Division

MG/akg

Ref: ID# 566178

Enc. Submitted documents

c: Requestor  
(w/o enclosures)