



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 4, 2016

Ms. Leticia D. McGowan
School Attorney
Dallas Independent School District
3700 Ross Avenue
Dallas, Texas 75204

OR2016-00124

Dear Ms. McGowen:

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# 592761 (Dallas ORR# 14623).

The Dallas Independent School District (the "district") received a request for all completed Office of Internal Audit investigations between specified dates. You claim the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.107, 552.111, and 552.116 of the Government Code, as well as privileged under rule 503 of the Texas Rules of Evidence. We have considered your arguments and reviewed the submitted information.

We note some the submitted information was the subject of previous requests for information, as a result of which this office issued Open Records Letter Nos. 2015-06598 (2015), 2015-16995 (2015), and 2015-23858 (2015). In Open Records Letter No. 2015-06598, we ruled certain information may be withheld under rule 503 of the Texas Rules of Evidence, portions of the remaining information must be withheld under sections 552.117(a)(1) and 552.136 of the Government Code, and the remaining information must be released in accordance with copyright law. In Open Records Letter No. 2015-16995, we ruled the district may withhold some information under rule 503 and section 552.107(1) of the Government Code, must withhold certain information under section 552.101 of the Government Code in conjunction with common-law privacy, must withhold portions of the remaining information under sections 552.102, 552.117(a)(1), 552.130, 552.137,

and 552.147(a-1) of the Government Code, and must release the remaining information pursuant to copyright law. In Open Records Letter No. 2015-23858, in pertinent part, we ruled the district must withhold certain information under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code, must withhold portions of the remaining information under section 552.117(a)(1) of the Government Code, and must release the remaining information at issue. There is no indication the law, facts, or circumstances on which the prior rulings were based have changed for the information at issue. Thus, the district must continue to on Open Records Letter Nos. 2015-06598, 2015-16995, and 2015-23858 for the information we have marked, and withhold and release the information at issue in accordance with those rulings.¹ See Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in a prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). However, although the remaining investigation you have submitted was at issue in Open Records Letter No. 2015-23858, we understand circumstances have changed with respect to this investigation. Thus, the district may not rely on Open Records Letter No. 2015-23858 as a previous determination with respect to this investigation. See *id.* Accordingly, we will address the public availability of this information.

Next, we note the remaining information is subject to section 552.022 of the Government Code. Section 552.022 provides in part:

(a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

Gov't Code § 552.022(a)(1). We find the remaining information is a completed investigation subject to section 552.022(a)(1). The district must release the information subject to section 552.022(a)(1) unless it is excepted from disclosure under section 552.108 of the Government Code or made confidential under the Act or other law. Although you seek to withhold this information under section 552.107 of the Government Code, this section is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. See Open Records Decision Nos. 676 at 10-11 (2002) (attorney-client privilege

¹As we are able to make this determination, we need not address your arguments against disclosure of this information.

under Gov't Code § 552.107(1) may be waived), 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions). Therefore, the information at issue may not be withheld under this exception. However, the Texas Supreme Court has held the Texas Rules of Evidence are "other law" that make information expressly confidential for the purposes of section 552.022. *In re City of Georgetown*, 53 S.W.3d 328, 336 (Tex. 2001). Therefore, we will consider your argument under Texas Rule of Evidence 503. Moreover, you also raise section 552.101, which protects information made confidential under law, and section 552.102 of the Government Code, which makes information confidential under the Act. The information at issue also contains information that is subject to sections 552.117, 552.130, 552.136, and 552.137 of the Government Code, which make information confidential under the Act.² Thus, we will consider the applicability of these exceptions to the information at issue.

Texas Rule of Evidence 503 enacts the attorney-client privilege. Rule 503(b)(1) provides as follows:

A client has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made to facilitate the rendition of professional legal services to the client:

- (A) between the client or the client's representative and the client's lawyer or the lawyer's representative;
- (B) between the client's lawyer and the lawyer's representative;
- (C) by the client, the client's representative, the client's lawyer, or the lawyer's representative to a lawyer representing another party in a pending action or that lawyer's representative, if the communications concern a matter of common interest in the pending action;
- (D) between the client's representatives or between the client and the client's representative; or
- (E) among lawyers and their representatives representing the same client.

TEX. R. EVID. 503(b)(1). A communication is "confidential" if it is not intended to be disclosed to third persons other than those to whom disclosure is made in furtherance of the

²The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

rendition of professional legal services to the client or those reasonably necessary for the transmission of the communication. *Id.* 503(a)(5).

When asserting the attorney-client privilege, a governmental body has the burden of providing the necessary facts to demonstrate the elements of the privilege in order to withhold the information at issue. *See* ORD 676 at 6-7. Thus, in order to withhold attorney-client privileged information from disclosure under rule 503, a governmental body must: (1) show the document is a communication transmitted between privileged parties or reveals a confidential communication; (2) identify the parties involved in the communication; and (3) show the communication is confidential by explaining it was not intended to be disclosed to third persons and it was made in furtherance of the rendition of professional legal services to the client. Upon a demonstration of all three factors, the information is privileged and confidential under rule 503, provided the client has not waived the privilege or the document does not fall within the purview of the exceptions to the privilege enumerated in rule 503(d). *See Pittsburgh Corning Corp. v. Caldwell*, 861 S.W.2d 423, 427 (Tex. App.—Houston [14th Dist.] 1993, orig. proceeding).

You assert the information at issue includes confidential communications between attorneys for and employees of the district that were made for the purpose of rendering professional legal advice. You also assert the communications were intended to be confidential and their confidentiality has been maintained. We note you have not identified the information you contend is privileged under the attorney-client privilege. *See* Gov't Code § 552.301(e)(2) (governmental body must label information to indicate which exceptions apply). Therefore, we conclude the district has not established the information at issue consists of privileged attorney-client communications. Therefore, the district may not withhold this information under rule 503.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” *Id.* § 552.101. Section 552.101 encompasses 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 this section to apply to any document that evaluates, as that term is commonly understood, the performance of a teacher or administrator. Open Records Decision No. 643 (1996). In that opinion, we concluded that a teacher is someone who is required to hold and does hold a certificate or permit required under chapter 21 of the Education Code and is teaching at the time of his or her evaluation. *Id.*

You claim the information at issue constitutes an evaluation of a teacher that is confidential under section 21.355 of the Education Code. You state the individual at issue held the appropriate certificate at the time of the evaluation. However, upon review, we find the information at issue pertains to the employee at issue in his capacity as a coach. Thus, we find you have failed to demonstrate any of the information at issue constitutes an evaluation

of the performance of a teacher for the purposes of section 21.355 of the Education Code. *See* Educ. Code § 21.353 (teachers shall be appraised only on basis of classroom teaching performance and not in connection with extracurricular activities). Therefore, the district may not withhold the information at issue under section 552.101 of the Government Code in conjunction with section 21.355 of the Education 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.*, 354 S.W.3d 336 (Tex. 2010). The district must withhold the dates of birth of employees within the information at issue under section 552.102(a) of the Government Code.

Section 552.117(a)(1) of the Government Code applies to records a governmental body holds in an employment capacity and 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 552.117 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) (statutory predecessor to section 552.117 of the Government Code not applicable to cellular telephone numbers provided and paid for by governmental body and intended for official use). Whether a particular piece of information is protected by section 552.117(a)(1) must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Therefore, a governmental body must withhold information under section 552.117 on behalf of a current or former official or employee only if the individual made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. Accordingly, if the individuals 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), including the personal cellular telephone number if the cellular telephone service is not paid for by a governmental body. The district may not withhold this information under section 552.117 for those employees who did not make a timely election to keep the information confidential. However, the district must withhold the cellular telephone number at issue only if the cellular telephone service is not paid for by a governmental body.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator’s or driver’s license or permit, a motor vehicle title or registration, or a personal identification document issued by an agency of Texas or another state or country is excepted

from public release. Gov't Code § 552.130(a). We conclude the district must withhold the information we have marked under section 552.130 of the Government Code.

Section 552.136 states, "Notwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." *Id.* § 552.136(b); *see also id.* § 552.136(a) (defining "access device"). Upon review, we find the district must withhold the bank account numbers, credit card numbers, and bank routing numbers within the information at issue under section 552.136 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). *Id.* § 552.137(a)-(c). The e-mail addresses within the information at issue are not one of the types specifically excluded by section 552.137(c). *See id.* § 552.137(c). Accordingly, the district must withhold the e-mail addresses within the information at issue under section 552.137 unless the owners of the addresses affirmatively consent to their release.

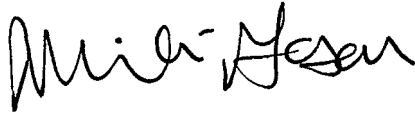
In summary, the district must continue to on Open Records Letter Nos. 2015-06598, 2015-16995, and 2015-23858 as previous determinations for the information we have marked, and withhold and release the information at issue in accordance with those rulings. The district must withhold the dates of birth of employees within the remaining information under section 552.102(a) of the Government Code. If the individuals whose information is at issue timely requested confidentiality pursuant to section 552.024 of the Government Code, the district must withhold the information we have marked under section 552.117(a)(1) of the Government Code, including the personal cellular telephone number if the cellular telephone service is not paid for by a governmental body. The district must withhold the information we have marked under section 552.130 of the Government Code. The district must withhold the bank account numbers, credit card numbers, and bank routing numbers within the information at issue under section 552.136 of the Government Code. The district must withhold the e-mail addresses within the information at issue under section 552.137 of the Government Code unless the owners of the addresses affirmatively consent to their release. 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](#), 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# 592761

Enc. Submitted documents

c: Requestor
(w/o enclosures)