



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

September 26, 2016

Ms. Karla Schultz  
Counsel for the New Braunfels Independent School District  
Walsh, Gallegos, Trevino, Russo & Kyle, P.C.  
P.O. Box 2156  
Austin, Texas 78768

OR2016-21699

Dear Ms. Schulz:

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# 628116.

The New Braunfels Independent School District (the "district"), which you represent, received a request for a named individual's personnel file. You state you will release some information. We understand you have redacted some information protected by section 552.117(a)(1) of the Government Code pursuant to section 552.024(c)(2) of the Government Code, a personal e-mail address under section 552.137 of the Government Code pursuant to Open Records Decision No. 684 (2009), and a social security number under section 552.147(b) of the Government Code.<sup>1</sup> You claim some of the submitted information is not subject to the Act. You also claim some of the submitted information is excepted from

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<sup>1</sup>Section 552.024(c)(2) of the Government Code authorizes a governmental body to redact information protected by section 552.117(a)(1) of the Government Code without the necessity of requesting a decision under the Act if the current or former employee or official to whom the information pertains timely chooses not to allow public access to the information. *See* Gov't Code § 552.024(c)(2). Open Records Decision No. 684 serves as a previous determination to all governmental bodies authorizing them to withhold certain categories of information, including personal e-mail addresses under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision. *See* ORD 684. 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).

disclosure under sections 552.101 and 552.102 of the Government Code. We have considered your arguments and reviewed the submitted information. We have also received and considered the requestor's comments. *See* Gov't Code § 552.304 (interested party may submit written comments regarding availability of requested information).

Initially, the district argues some of the submitted information is not subject to the Act. The Act applies to "public information," which is defined in section 552.002 of the Government Code as:

(a) . . . information that is written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

(1) by a governmental body;

(2) for a governmental body and the governmental body:

(A) owns the information;

(B) has a right of access to the information; or

(C) spends or contributes public money for the purpose of writing, producing, collecting, assembling, or maintaining the information; or

(3) by an individual officer or employee of a governmental body in the officer's or employee's official capacity and the information pertains to official business of the governmental body.

*Id.* § 552.002(a). Thus, virtually all of the information in a governmental body's physical possession constitutes public information under section 552.002. The district explains some of the submitted information consists of the named individual's letter of resignation, and this information includes his reason for resigning, which the district has marked. The district asserts the marked information within the letter of resignation is not subject to the Act. However, based on our review, we find the information at issue was written, produced, collected, assembled, or maintained by the district in connection with the district's official business. Thus, we find the information at issue is subject to the Act and the district must release it unless the information falls within an exception to public disclosure under the Act. *Id.* §§ 552.006, .021, .301, .302. Accordingly, we will address the district's arguments against its disclosure.

Next, we address the requestor's contention the district did not comply with the procedural requirements of the Act. Section 552.301 of the Government Code describes the procedural

obligations placed on a governmental body that receives a written request for information it wishes to withhold. *See id.* § 552.301(b). Pursuant to section 552.301(b), the governmental body must request a ruling from this office and state the exceptions to disclosure that apply within ten business days after receiving the request. *See id.* § 552.301(b). Pursuant to section 552.301(d), a governmental body must provide the requestor with (1) a written statement that the governmental body wishes to withhold the requested information and has asked for a decision from the attorney general, and (2) a copy of the governmental body's written communications to the attorney general within ten business days of receiving the request for information. *Id.* § 552.301(d). Pursuant to section 552.302, a governmental body's failure to timely provide the requestor with a copy of its written communication to this office results in the presumption that the information is public. *Id.* § 552.302. The district states, and the requestor confirms, the district received the instant request for information on July 5, 2016. The district informs us it was closed for business July 8 and July 15, 2016. This office does not count the date the request was received or days the governmental body is closed for the purpose of calculating a governmental body's deadlines under the Act. Thus, the ten-business-day deadline to provide information to the requestor pursuant to section 552.301(d) was July 21, 2016. The envelope in which the district provided the information required by section 552.301(b) was postmarked July 21, 2016. *See id.* § 552.308(a)(1) (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). The request for a ruling indicates the requestor was copied on the correspondence. *See id.* Accordingly, we find the district complied with the procedural requirements mandated by section 552.301(d). Therefore, we will consider the district's arguments against disclosure of the submitted information.

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 1324a of title 8 of the United States Code. Section 1324a governs I-9 forms and their related documents. This section provides an I-9 form and "any information contained in or appended to such form, may not be used for purposes other than for enforcement of this chapter" and for enforcement of other federal statutes governing crime and criminal investigations. *See* 8 U.S.C. § 1324a(b)(5); *see also* 8 C.F.R. § 274a.2(b)(4). Release of the submitted I-9 form in this instance would be "for purposes other than enforcement" of the referenced federal statutes. Therefore, we conclude the submitted I-9 form is confidential pursuant to section 1324a. Accordingly, the district must withhold the I-9 form we have marked under section 552.101 in conjunction with section 1324a.<sup>2</sup>

Section 552.101 of the Government Code also encompasses section 21.355 of the Education Code. Section 21.355(a) provides that "[a] document evaluating the performance of a teacher

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<sup>2</sup>As our ruling is dispositive, we do not address your remaining argument to withhold this information.

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). The Third Court of Appeals has concluded a written reprimand constitutes an evaluation for purposes of section 21.355, because “it reflects the principal’s judgment regarding [a teacher’s] actions, gives corrective direction, and provides for further review.” *See Abbott v. North East Indep. Sch. Dist.*, 212 S.W.3d 364 (Tex. App.—Austin 2006, no pet.). 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* ORD 643 at 4.

The district contends Exhibit 3 contains evaluations that are confidential under section 21.355 of the Education Code. The district asserts, and provides documentation showing, the information at issue evaluates the performance of a teacher who holds the appropriate certificate for the purposes of section 21.355. Upon review, we conclude the information at issue consists of evaluations of a teacher’s performance and is subject to section 21.355. Therefore, the district must withhold Exhibit 3 under section 552.101 of the Government Code in conjunction with section 21.355.

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 employee’s name, courses taken, and degrees obtained, the district must withhold the submitted college transcript under section 552.102(b).<sup>3</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). We understand you to assert the privacy analysis under section 552.102(a) is the same as the common-law privacy test under section 552.101 of the Government Code. Section 552.101 encompasses the doctrine of common-law privacy, which protects information that (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). In *Hubert v. Harte-Hanks Texas Newspapers, Inc.*, 652 S.W.2d 546, 549-51 (Tex. App.—Austin 1983, writ ref’d n.r.e.), the

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<sup>3</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

court of appeals ruled the privacy test under section 552.102(a) is the same as the *Industrial Foundation* privacy test. However, the Texas Supreme Court has expressly disagreed with *Hubert's* interpretation of section 552.102(a), and held the privacy standard under section 552.102(a) differs from the *Industrial Foundation* test under section 552.101. *See Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex.*, 354 S.W.3d 336 (Tex. 2010). The supreme court also considered the applicability of section 552.102(a) and held it exempts from disclosure the dates of birth of state employees in the payroll database of the Texas Comptroller of Public Accounts. *See id.* at 348. Upon review, we find the district must withhold the employee's date of birth it marked under section 552.102(a). However, we find the district has failed to demonstrate the applicability of section 552.102(a) to any of the remaining information, and the district may not withhold it on this basis.

Section 552.101 of the Government Code also encompasses common-law privacy, which is discussed above and protects information that (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found.*, 540 S.W.2d at 685. 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. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See Open Records Decision No. 455 (1987)*. Upon review, we find the information we have marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the district must withhold the information we have marked under section 552.101 in conjunction with common-law privacy. However, upon review, we find the district has failed to demonstrate the remaining information is highly intimate or embarrassing and of no legitimate public interest. Therefore, the district may not withhold the remaining information under section 552.101 in conjunction with common-law privacy.

In summary, the district must withhold the 1-9 form we have marked under section 552.101 of the Government Code in conjunction with section 1324a of title 8 of the United States Code. The district must withhold Exhibit 3 under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code. With the exception of the employee's name, courses taken, and degrees obtained, the district must withhold the submitted college transcript under section 552.102(b) of the Government Code. The district must withhold the employee's date of birth it marked under section 552.102(a) of the Government Code. The district must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. 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](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 "Cole Hutchison", with a long horizontal flourish extending to the right.

Cole Hutchison  
Assistant Attorney General  
Open Records Division

CH/bhf

Ref: ID# 628116

Enc. Submitted documents

c: Requestor  
(w/o enclosures)