



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 15, 2016

Ms. Elisabeth Nelson
Counsel to Carrollton-Farmers Branch Independent School District
Walsh Gallegos Trevino Russo & Kyle P.C.
P.O. Box 168046
Irving, Texas 75016

OR2016-27771

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# 644942.

The Carrollton-Farmers Branch Independent School District (the "district"), which you represent, received a request for all information pertaining to a named individual, with the exception of social security numbers and dates of birth.¹ You state the district will certain information pursuant to section 552.130(c) and Open Records Decision No. 684 (2009).² You claim the submitted information is excepted from disclosure under sections 552.101 and 552.102 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

¹You state the district sought and received clarification of the request. *See* Gov't Code § 552.222(b) (providing that 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 governmental entity, acting in good faith, requests clarification or narrowing of unclear or overbroad request for public information, ten-day period to request attorney general ruling is measured from date request is clarified or narrowed).

²Section 552.130(c) of the Government Code allows a governmental body to redact the information described in subsection 552.130(a) without the necessity of seeking a decision from the attorney general. *See* Gov't Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e). Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold certain categories of information without the necessity of requesting an attorney general decision.

Initially, we note the requestor specifically excludes social security numbers and dates of birth from the scope of the request. Accordingly, these types of information are not responsive to the instant request. This ruling does not address the public availability of non-responsive information, nor is the district required to release non-responsive information to this requestor.

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 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 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. *See* ORD 643.

You claim the information in Exhibit B constitutes an evaluation of a teacher that is confidential under section 21.355 of the Education Code. However, upon review, we find the information in Exhibit B pertains to the employee at issue in his capacity as a coach. Thus, we find you have failed to demonstrate any of the submitted information 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 Exhibit B under section 552.101 of the Government Code in conjunction with section 21.355 of the Education 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). 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). You seek to withhold the employee’s grade point averages contained in a resume and application under section 552.102(b). However, section 552.102(b) applies only to transcripts. Accordingly, section 552.102(b) does not apply to the employee’s grade point average contained in documents other than transcripts, and the district may not withhold the grade point averages at issue under section 552.102(b). *See* Open Records Decision Nos. 649 at 3 (1996) (language of a confidentiality provision controls the scope of its protection), 478 at 2 (1987) (statutory confidentiality requires express language making certain information confidential or stating that information shall not be released to the public). Thus, with the exception of the employee’s name, courses taken, and degree

obtained, which must be released, the district must withhold the submitted college transcripts in Exhibit C pursuant to section 552.102(b) of the Government Code. However, upon review, we find none of the remaining information consists of higher education transcripts of a professional public school employee. Therefore, the district may not withhold any of the remaining information at issue under section 552.102(b) of the Government Code.

We note some of the remaining responsive information in Exhibit C may be subject to section 552.117 of the Government Code.³ Section 552.117(a)(1) excepts from disclosure the current and former 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 this information be kept confidential under section 552.024 of the Government Code. Gov't Code § 552.117(a). Whether 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). The district may only withhold information under section 552.117(a)(1) on behalf of current or former officials or employees who made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. Therefore, if the individual whose information is at issue timely requested confidentiality under section 552.024, the district must withhold the information we have marked in Exhibit C under section 552.117(a)(1) of the Government Code. Conversely, if the individual at issue did not timely request confidentiality under section 552.024, the district may not withhold the marked information under section 552.117(a)(1) of the Government Code.

In summary, with the exception of the employee's name, courses taken, and degree obtained, which must be released, the district must withhold the submitted college transcripts in Exhibit C pursuant to section 552.102(b) of the Government Code. If the employee whose information is at issue timely elected confidentiality, the district must withhold the information we have marked in Exhibit C under section 552.117(a)(1) of the Government Code. The remaining responsive 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

³The 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).

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 that reads "Britni Ramirez". The signature is written in a cursive style with a large, looping "R" and "M".

Britni Ramirez
Assistant Attorney General
Open Records Division

BR/bhf

Ref: ID# 644942

Enc. Submitted documents

c: Requestor
(w/o enclosures)