



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 10, 2017

Ms. Mia M. Martin
General Counsel
Richardson Independent School District
400 South Greenville Avenue
Richardson, Texas 75081-4198

OR2017-15266

Dear Ms. Martin:

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# 665299.

The Richardson Independent School District (the "district") received a request for personnel records pertaining to a named former employee, except for teacher evaluations.¹ You claim some of the submitted information is excepted from disclosure under sections 552.101,

¹You state the district sought and received clarification of the request for information. *See* Gov't Code § 552.222(b) (stating if information requested is unclear to governmental body or if large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used); *City of Dallas v. Abbott*, 304 S.W.3d 380 (Tex. 2010) (holding when governmental entity, acting in good faith, requests clarification of unclear or overbroad request for public information, ten-business-day period to request attorney general opinion is measured from date request is clarified or narrowed).

552.102, 552.117, 552.130, 552.136, 552.137, and 552.147 of the Government Code.² We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the requestor specifically excluded teacher evaluations. Thus, the portion of the submitted information that consists of teacher evaluations is not responsive to the present request. This ruling does not address the public availability of any information that is not responsive to the request, and the district is not required to release that information in response to the request.

Next, you inquire whether or not the district may withhold the named former employee's employee identification number from the requested information pursuant to Open Records Letter No. 2008-01744 (2008). In that ruling, we concluded the employee identification numbers the district sought to withhold did not constitute public information under section 552.002 of the Government Code. Accordingly, we ruled the information at issue was not subject to the Act and need not be released to the requestor.

In Open Records Decision No. 673 (2001), this office set forth the circumstances under which a governmental body may rely on a ruling from this office as a previous determination for purposes of section 552.301(a) of the Government Code. *See* Open Records Decision No. 673. In that decision, this office noted there are two types of previous determinations. The first type exists when the requested information is precisely the same information as was addressed in a prior attorney general ruling, the ruling was addressed to the same governmental body, the ruling concluded the information is or is not excepted from disclosure, and the facts, circumstances, and law on which the prior ruling was based have not changed. *Id.* at 6-7. The second type is an attorney general decision that explicitly grants a governmental body or class of governmental bodies a previous determination that may be relied upon to withhold a specific type of information without seeking an attorney general's ruling if certain conditions are met. *Id.* at 7-8.

We note Open Records Letter No. 2008-01744 does not authorize the district to withhold employee identification numbers on the basis of section 552.002 without the necessity of again requesting an attorney general decision with regard to the applicability of section 552.002. *See* Gov't Code § 552.301(a); ORD 673 at 7-8. Thus, the district may not rely on Open Records Letter No. 2008-01744 as a second type of previous determination and withhold any of the requested information on that basis.³ You indicate, however, the named

²Although you also raise section 552.024 of the Government Code as an exception to disclosure, section 552.117 of the Government Code is the proper exception for the substance of your argument. Section 552.024 authorizes a governmental body to withhold information subject to section 552.117 without requesting a decision from this office if the current or former employee or official timely chooses not to allow public access to the information. *See* Gov't Code § 552.024(c).

³We note a governmental body need not request a ruling from this office with respect to information that is not subject to the Act.

employee's identification number at issue in the current request was ruled upon by this office in Open Records Letter No. 2008-01744, and the law, facts, and circumstances on which the prior ruling was based have not changed. Therefore, we conclude the district may continue to rely on that ruling as a first type of previous determination and need not release the employee identification number at issue pursuant to section 552.002 of the Government Code in accordance with Open Records Letter No. 2008-01744. *See* ORD 673.

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 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). 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. *Id.*

You assert some of the remaining responsive information consists of written evaluations that are confidential under section 21.355. You inform us the administrator at issue held the appropriate certification at the time of the evaluations. Based on your representations and our review, we agree the information at issue constitutes evaluations as contemplated by section 21.355. Accordingly, the district must withhold the information you marked under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code.⁴

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. 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 conclude the information we have marked meets the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the district must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy.

⁴As our ruling is dispositive, we need not address the district's remaining argument against disclosure of the information at issue.

Section 552.102(b) of the Government Code excepts from 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, “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). Accordingly, with the exception of the information that reveals the employee’s name, the degree obtained, and the courses taken, which must be released, the district must withhold the submitted educational transcripts under section 552.102(b) of the Government Code.⁵

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, we find the district must withhold the date of birth you marked under section 552.102(a) of the Government Code.

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 a current or former employee or official of a governmental body who requests this information be kept confidential under section 552.024 of the Government Code, except as provided by section 552.024(a-1). *See* Gov’t Code §§ 552.117(a)(1), .024. 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, the 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. Information may not be withheld under section 552.117(a)(1) on behalf of a current or former employee or official who did not timely request under section 552.024 the information be kept confidential. Therefore, to the extent the employee at issue timely requested confidentiality under section 552.024 of the Government Code, the district must withhold the information you marked under section 552.117(a)(1) of the Government Code.

⁵As our ruling is dispositive, we need not address the district’s remaining arguments against disclosure of the information at issue.

Conversely, to the extent the employee 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).

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 marked under section 552.130 of the Government Code.

Section 552.147(a-1) of the Government Code provides, "[t]he social security number of an employee of a school district in the custody of the district is confidential." *Id.* § 552.147(a-1). Upon review, we find the district must withhold the social security number of the district employee you marked under section 552.147(a-1) of the Government Code.

In summary, the district need not release the employee identification number at issue pursuant to section 552.002 of the Government Code in accordance with Open Records Letter No. 2008-01744. The district must withhold the information you marked under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code. The district must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. With the exception of the information that reveals the employee's name, the degree obtained, and the courses taken, which must be released, the district must withhold the submitted educational transcripts under section 552.102(b) of the Government Code. The district must withhold the date of birth you marked under section 552.102(a) of the Government Code. To the extent the employees at issue timely requested confidentiality under section 552.024 of the Government Code, the district must withhold the information you marked under section 552.117(a)(1) of the Government Code. The district must withhold the motor vehicle record information you marked under section 552.130 of the Government Code. We find the district must withhold the social security number of the district employee you marked under section 552.147(a-1) of the Government Code. 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, 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 "Kaelan A. Henze". The signature is fluid and cursive, with the first name "Kaelan" being the most prominent part.

Kaelan A. Henze
Attorney
Open Records Division

KAH/eb

Ref: ID# 665299

Enc. Submitted documents

c: Requestor
(w/o enclosures)