



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 8, 2017

Mr. Will Cabler
Counsel for the Kerrville Independent School District
The Fowler Law Firm, P.C.
8310 North Capital of Texas Highway, Suite 150
Austin, Texas 78731

OR2017-27972

Dear Mr. Cabler:

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# 687146.

The Kerrville Independent School District (the "district"), which you represent, received a request for the personnel file of a named individual. You state the district has released some of the requested information. We understand the district does not maintain some of the requested information.¹ The district claims portions of the submitted information are excepted from disclosure under sections 552.101, 552.102, 552.117, 552.137, and 552.147 of the Government Code.² We have considered the exceptions the district claims and reviewed 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." Gov't Code § 552.101. Section 552.101 encompasses section 1324a of title 8 of the United States

¹The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990), 452 at 3 (1986), 362 at 2 (1983).

²Although you cite section 552.105 of the Government Code, we understand you to raise section 552.102 based on the substance of your argument.

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). In this instance, release of the submitted I-9 form and attached documents would be “for purposes other than for enforcement” of the referenced federal statutes. Thus, we find the submitted I-9 form and related documents are confidential pursuant to section 1324a of title 8 of the United States Code. Accordingly, the district must withhold Exhibit E in its entirety under section 552.101 of the Government Code in conjunction with section 1324a of title 8 of the United States Code.

Section 552.101 of the Government Code also encompasses section 21.355 of the Education Code, which provides, in relevant part, “[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 administrator. *See* Open Records Decision No. 643 (1996). In Open Records Decision No. 643, we determined for purposes of section 21.355, the word “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 and who is in the process of teaching, as that term is commonly defined, at the time of the evaluation. *See id.* at 4. We further determined “teacher interns, teacher trainees, librarians, educational aids and counselors cannot be teachers or administrators for purposes of section 21.355.” *See* Open Records Decision No. 684 at 5 (2009).

The district states Exhibit C is subject to section 21.355 of the Government Code. Upon review, we agree most of the information in Exhibit C consists of evaluations of a teacher as contemplated by section 21.355 of the Education Code. We understand the teacher held the appropriate certificates. However, we note the remaining evaluations at issue pertain to the employee’s performance as a librarian and media specialist. Thus, we find the district failed to demonstrate this information evaluates the performance of a teacher or administrator for the purposes of section 21.355. This information, which we marked for release, may not be withheld under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code. Accordingly, with the exception of the information we marked for release, the district must withhold Exhibit C 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). However, section 552.102(b) does not except from public disclosure the employee’s name, “the degree obtained[.]” or the curriculum on a transcript in the personnel file of the employee.” *Id.*; *see also* Open Records Decision No. 526 (1989). Accordingly, with the exception of the employee’s name, courses

taken, and degrees obtained, the district must withhold Exhibit D pursuant to section 552.102(b) of the Government 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 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 has failed to demonstrate the applicability of section 552.102(a) of the Government Code to the remaining information, and the district may not withhold any of the remaining information on this basis.

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(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, 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 confidential under section 552.024. Section 552.117(a)(1) also applies to the personal cellular telephone number of a current or former official or employee of a governmental body, provided the cellular telephone service is not paid by a governmental body. *See* Open Records Decision No. 506 at 5-6 (1988). 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.

In this instance, the submitted information includes documentation showing the named individual timely elected to keep her information confidential. Accordingly, the district must withhold the information we have marked in Exhibits F and G under section 552.117(a)(1) of the Government Code; however, the district may only withhold the marked cellular telephone number if the cellular telephone service is not paid for by a governmental body.

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). Gov’t Code § 552.137(a)-(c). The e-mail address at issue is not a type specifically excluded by section 552.137(c) of the Government Code. Accordingly, the district must withhold the e-mail address we have marked in Exhibits F and G under section 552.137 of the Government Code, unless the owner of the e-mail address affirmatively consents to its disclosure.

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). Thus, section 552.147(a-1) makes 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. *Id.* § 552.024(a-1) (school district may not require employee or former employee of district to choose whether to allow public access to employee’s or former employee’s social security number). Reading sections 552.024(a-1) and 552.147(a-1) together, 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 information we have marked in Exhibit F under section 552.147(a-1) of the Government Code.

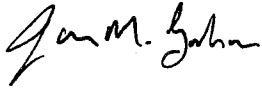
In summary, the district must withhold Exhibit E in its entirety under section 552.101 of the Government Code in conjunction with section 1324a of title 8 of the United States Code. With the exception of the information we marked for release, the district must withhold Exhibit C under section 552.101 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 Exhibit D pursuant to section 552.102(b) of the Government Code. The district must withhold the information we have marked in Exhibits F and G under section 552.117(a)(1) of the Government Code; however, the district may only withhold the marked cellular telephone number if the cellular telephone service is not paid for by a governmental body. The district must withhold the e-mail address we have marked in Exhibits F and G under section 552.137 of the Government Code, unless the owner of the e-mail address affirmatively consents to its disclosure. The district must withhold the information we have marked in Exhibit F 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,



James M. Graham
Attorney
Open Records Division

JMG/eb

Ref: ID# 687146

Enc. Submitted documents

c: Requestor
(w/o enclosures)