



KEN PAXTON  
ATTORNEY GENERAL OF TEXAS

December 13, 2017

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

OR2017-28284

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# 687836.

The Richardson Independent School District (the "district") received a request for personnel records pertaining to a named former employee. You claim some of the submitted information is not subject to the Act and some of the remaining information is excepted from disclosure under sections 552.101, 552.102, 552.117, 552.130, 552.136, 552.137, and 552.147 of the Government Code.<sup>1</sup> We have considered your arguments and reviewed the submitted information.<sup>2</sup>

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<sup>1</sup>Although 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).

<sup>2</sup>We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Initially, 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.<sup>3</sup> You further state the named employee's identification number at issue in the current request was not ruled upon by this office in Open Records Letter No. 2008-01744. Therefore, we conclude the district may not continue to rely on that ruling as a first type of previous determination. *See* ORD 673.

You assert that the employee identification number at issue is not subject to the Act. In Open Records Decision No. 581 (1990), this office determined that certain computer information, such as source codes, documentation information, and other computer programming, that has no significance other than its use as a tool for the maintenance, manipulation, or protection of public property is not the kind of information made public under section 552.021 of the Government Code. You have previously informed our office that the district's employees use their employee identification numbers solely to access the district's confidential computer databases. Based on this representation and our review, we agree that the submitted district employee identification number does not constitute public information

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

under section 552.002 of the Government Code. Accordingly, this information is not subject to the Act and need not be released to the requestor.

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). We also determined a “teacher” for purposes of section 21.355 means a person who (1) 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 (2) is engaged in the process of teaching, as that term is commonly defined, at the time of the evaluation. *See id.* at 4.

You assert some of the submitted information consists of written evaluations that are confidential under section 21.355. You inform us the teacher 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.

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. We note an individual’s name, address, and telephone number are generally not private information under common-law privacy. *See* Open Records Decision No. 554 at 3 (1990) (disclosure of person’s name, address, or telephone number not an invasion of privacy). We further note the scope of a public employee’s privacy is narrow. *See* Open Records Decision No. 423 at 2 (1984). Upon review, we find the district has not demonstrated any of the remaining information at issue is highly intimate or embarrassing and not of legitimate public concern. Thus, the district may not withhold any portion of the remaining information under section 552.101 in conjunction with common-law privacy.

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, which we have marked, under section 552.102(b) of the Government Code.<sup>4</sup> However, upon review, we find you have failed to demonstrate the applicability of section 552.102(b) to any of the remaining information and the district may not withhold this information under section 552.102(b).

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. Conversely, to the extent the employee at issue did not timely request confidentiality under

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<sup>4</sup>As our ruling is dispositive, we need not address the district's remaining arguments against disclosure of the information at issue.

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 we marked under section 552.130 of the Government Code.

Section 552.136 of the Government Code provides, "[n]otwithstanding any other provision of [the Act], 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). Section 552.136(a) defines "access device" as "a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to . . . obtain money, goods, services, or another thing of value [or] initiate a transfer of funds other than a transfer originated solely by paper instrument." *Id.* § 552.136(a). Upon review, we find you have not demonstrated how any of the remaining information consists of access device numbers for purposes of section 552.136. Accordingly, the district may not withhold the remaining information 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)-©. The e-mail addresses at issue are not a type specifically excluded by section 552.137(c) of the Government Code. Accordingly, the district must withhold the e-mail addresses you marked under section 552.137 of the Government Code, unless the owners of the e-mail addresses affirmatively consent to their 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). 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 submitted district employee identification number does not constitute public information under section 552.002 of the Government Code and need not be released to the requestor. 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. 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 we marked 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 we marked under section 552.130 of the Government Code. The district must withhold the e-mail addresses you marked under section 552.137 of the Government Code, unless the owners of the e-mail addresses affirmatively consent to their disclosure. 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](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,



Paige Lay  
Assistant Attorney General  
Open Records Division

PL/gw

Ref: ID# 687836

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)