



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 31, 2018

Ms. Kristi Godden
Counsel for the Edinburg Consolidated Independent School District
O'Hanlon, Demerath & Castillo
808 West Avenue
Austin, Texas 78701-2208

OR2018-02095

Dear Ms. Godden:

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# 693615.

The Edinburg Consolidated Independent School District (the "district"), which you represent, received a request for the personnel file of a named district employee. You state the district will redact information protected by section 552.117(a)(1) of the Government Code pursuant to section 552.024(c)(2) of the Government Code, information subject to sections 552.130(c) and 552.147(b) of the Government Code, and information pursuant to Open Records Decision No. 684 (2009).¹ Further, you state the district will redact dates of birth pursuant

¹Section 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). Section 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 id.* § 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). 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 id.* § 552.147(b). Open Records Decision No. 684 is a previous determination issued by this office authorizing all governmental bodies to withhold certain categories of information without the necessity of requesting an attorney general decision.

to Open Records Letter No 2016-11758 (2016).² You claim some of 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.

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 21.048 of the Education Code, which addresses teacher certification examinations. Section 21.048(c-1) provides the following:

The results of an examination administered under this section are confidential and are not subject to disclosure under [the Act], unless the disclosure is regarding notification to a parent of the assignment of an uncertified teacher to a classroom as required by section 21.057.

Educ. Code § 21.048(c-1). Upon review, we find the information you marked consists of the results of an examination administered under section 21.048 of the Education Code. We have no indication section 21.057 of the Education Code is applicable in this instance. Accordingly, the district must withhold the information you marked under section 552.101 of the Government Code in conjunction with section 21.048(c-1) of the Education Code.

Section 552.101 of the Government Code also encompasses section 21.355 of the Education Code. Section 21.355 provides, in relevant part, “[a] document evaluating the performance of a teacher or administrator is confidential.” *Id.* § 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. Further, 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.*

²Open Records Letter No. 2016-11758 is a previous determination issued to the district authorizing it to withhold the dates of birth of public citizens under section 552.101 of the Government Code in conjunction with common-law privacy without seeking a ruling from this office. *See* Open Records Decision No. 673 (2001) (listing elements of second type of previous determination under section 552.301 (a) of the Government Code).

You assert, and we agree, some of the remaining information contains confidential evaluations of the named district employee. You inform us, and provide documentation demonstrating, the employee was certified as a teacher and administrator by the State Board of Educator Certification. Further, the employee was acting as a teacher or administrator at the time the respective evaluations were prepared. 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 552.102(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 marked employee’s date of birth subject to section 552.102(a) of the Government Code.

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). However, this section further provides that “the degree obtained or the curriculum on a transcript in the personnel file of the employee” is not excepted from disclosure. *Id.* Thus, with the exception of the educator’s name, courses taken, and degree obtained, the district must withhold the transcripts you marked under section 552.102(b) of the Government Code.


In summary, the district must withhold the information you marked under section 552.101 of the Government Code in conjunction with section 21.048(c-1) of the Education Code. 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 marked employee’s date of birth subject to section 552.102(a) of the Government Code and, with the exception of the educator’s name, courses taken, and degree obtained, the transcripts you marked under section 552.102(b) 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 that reads "Emily Kunst". The signature is written in a cursive, flowing style.

Emily Kunst
Assistant Attorney General
Open Records Division

EK/tdw

Ref: ID# 693615

Enc. Submitted documents

c: Requestor
(w/o enclosures)