



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 16, 2019

Ms. Morgan Beam
Counsel for the Hamshire-Fannett Independent School District
Walsh Gallegos Trevino Russo & Kyle, P.C.
10375 Richmond Avenue, Suite 1357
Houston, Texas 77042

OR2019-01453

Dear Ms. Beam:

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# 746641.

The Hamshire-Fannett Independent School District (the "district"), which you represent, received a request for information related to a specified incident, communications with and the personnel file of a named district employee, and specified policies and procedures.¹ We understand the district has redacted student-identifying information from the submitted documents pursuant to the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code.² The district states it is releasing some of the

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

²The United States Department of Education Family Policy Compliance Office (the "DOE") has informed this office FERPA does not permit state and local educational authorities to disclose to this office, without parental or student consent, unredacted, personally identifiable information contained in education records for the purpose of our review in the open records ruling process under the Act. The DOE has determined FERPA determinations must be made by the educational authority in possession of the education records. A copy of this letter may be found on the Office of the Attorney General's website: <https://www.texasattorneygeneral.gov/sites/default/files/files/divisions/open-government/20060725-USDOE-FERPA.pdf>.

requested information. The district claims the submitted information is excepted from disclosure under sections 552.101 and 552.102 of the Government Code. 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. This section encompasses information protected by other statutes. Section 21.355 of the Education Code 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. The district informs us the information submitted as Exhibit 5 relates to a teacher who was certified as a teacher by the State Board of Educator Certification and was acting as a teacher at the time the information was created. Upon review, we agree Exhibit 5 consists of evaluations of a teacher by the district. Accordingly, the district must withhold Exhibit 5 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 section 22.08391(a) of the Education Code. Subchapter C of chapter 22 of the Education Code addresses criminal history records of school district employees and volunteers. Section 22.08391 provides, in part:

(a) Information collected about a person to comply with this subchapter, including the person’s name, address, phone number, social security number, driver’s license number, other identification number, and fingerprint records:

(1) may not be released except:

(A) to comply with this subchapter;

(B) by court order; or

(C) with the consent of the person who is the subject of the information;

(2) is not subject to disclosure as provided by [the Act]; and

(3) shall be destroyed by the requestor or any subsequent holder of the information not later than the first anniversary of the date the information is received.

Educ. Code § 22.08391(a). Thus, except in specified circumstances, section 22.08391 prohibits the release of information about a person collected to conduct a criminal history record search. A portion of the documents submitted as Exhibit 7 consists of information that was collected in order for the district to comply with its obligations under Subchapter C of Chapter 22 of the Education Code. Upon review, we find this information, which we have marked, consists of a person's name, address, telephone number, social security number, and driver's license information that was collected to conduct a criminal history record search under Chapter 22. Accordingly, the district must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 22.08391 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). Accordingly, the district must withhold the employee's date of birth it marked under section 552.102(a) of the Government 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). Thus, with the exception of the employee's name, courses taken, and degree obtained, the district must withhold the college transcripts submitted as Exhibit 8 pursuant to section 552.102(b) of the Government 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. This office has found personal financial information not relating to a financial transaction between an individual and a governmental body is excepted from required public disclosure under common-law privacy. See Open Records Decision Nos. 600 (1992) (designation of beneficiary of employee's retirement benefits, direct deposit authorization, and forms allowing employee to allocate pretax compensation to group insurance, health care or dependent care), 545 (1990) (deferred compensation information, participation in voluntary investment program, election of optional insurance coverage, mortgage payments, assets, bills, and credit history). Upon review, we find some of the remaining information in Exhibit 7, which we marked, satisfies the standard articulated by the Texas Supreme Court

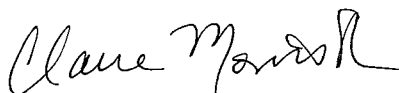
in *Industrial Foundation*. Therefore, the district must withhold the information we marked in Exhibit 7 under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, the district must withhold Exhibit 5 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 in Exhibit 7 under section 552.101 of the Government Code in conjunction with section 22.08391 of the Education Code, must withhold the employee's date of birth it marked in Exhibit 7 under section 552.102(a) of the Government Code, and must withhold the information we marked in Exhibit 7 under section 552.101 of the Government Code in conjunction with common-law privacy. With the exception of the employee's name, courses taken, and degree obtained, the district must withhold the college transcripts submitted as Exhibit 8 pursuant to section 552.102(b) of the Government Code. The district must release the remainder of Exhibit 7.

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,



Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/eb

Ref: ID# 746641

Enc. Submitted documents

c: Requestor
(w/o enclosures)