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ATTORNEY GENERAL OF TEXAS

February 11, 2019

Mr. John M. Hopkins
Counsel for the Deer Park Independent School District
Thompson & Horton LLP
3200 Southwest Freeway, Suite 2000
Houston, Texas 77027-7554

OR2019-03938

Dear Mr. Hopkins:

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# 749636.

The Deer Park Independent School District (the "district"), which you represent, received a request for seven categories of personnel information pertaining to a named individual during a specified period of time, including any employment applications and disciplinary records. You claim the submitted information is excepted from disclosure under sections 552.101, 552.117, and 552.147 of the Government Code. Additionally, you state you have notified an interested third party of the request. *See* Gov't Code § 552.304 (permitting interested third party to submit to attorney general reasons why requested information should or should not be released). We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the district has only submitted information pertaining to evaluations and certifications in response to the present request for information. Although you state the district has submitted a representative sample of the requested information, we find the submitted information is not representative of all the types of information to which the requestor seeks access. Please be advised, this open records letter ruling applies only to the types of information you have submitted for our review. This ruling does not authorize the district to withhold any information that is substantially different from the types of information you submitted to this office. *See id.* § 552.302 (where request for attorney

general decision does not comply with requirements of Gov't Code § 552.301, information at issue is presumed to be public). Accordingly, to the extent any additional information responsive to the other categories of the request existed on the date the district received the request, we assume the district has already released it. If the district has not released any such information, it must do so at this time. *See id.* §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes no exceptions apply to requested information, it must release information as soon as possible).

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, such as section 21.355 of the Education Code, which provides, in part:

(a) A document evaluating the performance of a teacher or administrator is confidential and not subject to disclosure under [the Act].

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). This office has determined the term "teacher," for purposes of section 21.355, means a person who is required to, and does in fact, hold a teacher's 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* ORD 643.

You assert the information submitted as Exhibit C consists of evaluations of the performance of a teacher employed by the district. You inform us, and provide documentation showing, the subject of the evaluations is a teacher who holds the appropriate certificate under subchapter B of chapter 21 of the Education Code. Further, we understand the subject of the evaluations was acting in his capacity as a teacher when the evaluations were prepared. Based on your representations and our review, we find portions of the information at issue, which we have marked, consist of evaluations of the performance of a teacher pursuant to section 21.355. Accordingly, the district must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code. However, upon review, we find you have failed to demonstrate any of the remaining information at issue constitutes a document evaluating the performance of a teacher or administrator for the purposes of section 21.355 of the Education Code. Therefore, the district may not withhold any portion of the remaining information under section 552.101 of the Government Code on that basis.

Section 552.101 of the Government Code also encompasses section 21.048 of the Education Code, which addresses teacher certification examinations. Section 21.048(c-1) provides:

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). You assert the information submitted as Exhibit D is confidential under section 21.048(c-1) of the Education Code. Upon review, we find the information we have marked reflects the results of examinations 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 we marked under section 552.101 of the Government Code in conjunction with section 21.048(c-1) of the Education Code. However, we find you have failed to demonstrate any of the remaining information at issue is confidential under section 21.048(c-1). Therefore, the district may not withhold any portion of the remaining information under section 552.101 of the Government Code on that 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. 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. Upon review, we find the no portion of the remaining information is subject to section 552.117 of the Government Code. Accordingly, the district may not withhold any portion of the remaining information under section 552.117 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). 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 social security number we have marked under section 552.147(a-1) of the Government Code.

In summary, the district must withhold the information we 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 section 21.048(c-1) of the Education Code. The district must withhold the social security number we have 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,



Blake Brennan
Attorney
Open Records Division

BB/eb

Ref: ID# 749636

Enc. Submitted documents

c: Requestor
(w/o enclosures)