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ATTORNEY GENERAL OF TEXAS

September 19, 2019

Ms. Leah Wingerson
Counsel for the Carroll Independent School District
Walsh Gallegos Treviño Russo & Kyle P.C.
P.O. Box 168046
Irving, Texas 75016

OR2019-26262

Dear Ms. Wingerson:

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# 784235.

The Carroll Independent School District (the "district"), which you represent, received a request for information pertaining to a named former employee. You state you are releasing some information. You state you will redact information under sections 552.130(c) and 552.147(a-1) of the Government Code.¹ You also state you will redact information protected by section 552.117(a)(1) of the Government Code as permitted by section 552.024(c)(2) of the Government Code and certain e-mail addresses subject to section 552.137 of the Government Code pursuant to the previous determination in Open Records Decision No. 684 (2009).² You claim the submitted information is excepted from

¹We note section 552.130(c) of the Government Code allows a governmental body to redact the information described in section 552.130(a) without the necessity of seeking a decision from the attorney general. *See* Gov't Code § 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). The social security number of an employee of a school district in the custody of the district is confidential and may be redacted without the necessity of requesting a decision from this office. *Id.* § 552.147(a-1), (b).

²Section 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). Open Records Decision No. 684 is a previous determination authorizing all governmental bodies to withhold certain categories of

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 21.355(a) of the Education Code, which provides “[a] document evaluating the performance of a teacher or administrator is confidential and is not subject to disclosure under [the Act].” Educ. Code § 21.355(a). The Third Court of Appeals has concluded a written reprimand constitutes an evaluation for purposes of section 21.355 because “it reflects the principal’s judgment regarding [a teacher’s] actions, gives corrective direction, and provides for further review.” *Abbott v. North East Indep. Sch. Dist.*, 212 S.W.3d 364 (Tex. App.—Austin 2006, no pet.). 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 “administrator” 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 who is performing the functions of an administrator, as that term is commonly defined, at the time of the evaluation. *See id.* at 4. In addition, the Third Court of Appeals has held a written reprimand constitutes an evaluation for purposes of section 21.355 because “it reflects the principal’s judgment regarding [a teacher’s] actions, gives corrective direction, and provides for further review.” *Abbott v. North East Indep. Sch. Dist.*, 212 S.W.3d 364 (Tex. App.—Austin 2006, no pet.).

You assert Exhibits 3 and 4 consist of confidential evaluations of an administrator by the district. You inform us the administrator at issue was certified as an administrator by the State Board of Educator Certification during the relevant time periods. Further, you state the administrator at issue was performing the functions of an administrator at the time of the evaluations. *See* ORD 643 at 4. Based on these representations and our review, we find the district must withhold Exhibits 3 and 4 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 section encompasses information protected by section 21.048 of the Education Code, which addresses teacher certification examinations. Section 21.048(c-1) provides as follows:

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.

information, including e-mail addresses of members of the public subject to section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

Educ. Code § 21.048(c-1). Portions of the submitted information, which you have marked, consist of exam results of a district employee for exams 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. Therefore, the district must withhold the information you marked under section 552.101 of the Government Code in conjunction with section 21.048 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 employee’s date of birth you have marked under section 552.102(a) of the Government Code.

In summary, the district must withhold Exhibits 3 and 4 under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code. The district must withhold the information you marked under section 552.101 of the Government Code in conjunction with section 21.048 of the Education Code. The district must withhold the employee’s date of birth you have marked under section 552.102(a) 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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG’s Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,



Paige Lay
Assistant Attorney General
Open Records Division

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Enc. Submitted documents

c: Requestor
(w/o enclosures)