



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 30, 2019

Ms. Stephanie Brosig
Counsel for the United Independent School District
J. Cruz & Associates, LLC
216 West Village Boulevard, Suite 202
Laredo, Texas 78041

OR2019-30575

Dear Ms. Brosig:

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# 794079.

The United Independent School District (the "district"), which you represent, received a request for the personnel records of a named former employee. You state the district has released some of the requested information. You state you 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.¹ You claim 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. 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). 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

¹ Section 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).

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 “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.

You assert Exhibit C consists of confidential evaluations of a teacher by the district. You inform us the teacher at issue held the appropriate certification and was acting as a teacher at the time the evaluations were prepared. Accordingly, we agree some of the information in Exhibit C, which we have marked, is confidential under section 552.101 of the Government Code in conjunction with section 21.355(a) of the Education Code. However, we find you have failed to demonstrate the remaining information in Exhibit C evaluates the performance of a teacher for purposes of section 21.355. Therefore, the district may not withhold this information under section 552.101 in conjunction with section 21.355.

Section 21.355(c) of the Education Code provides, “[a]t the request of a school district, open-enrollment charter school, or private school at which a teacher or administrator has applied for employment, a school district or an open-enrollment charter school shall give the requesting district or school a document evaluating the performance of a teacher or administrator employed by the school.” Act of May 25, 2019, 86th Leg., R.S., S.B. 1230, §5 (to be codified at Educ. Code § 21.355(c)). The requestor in this instance is from the Human Resources Department of Pflugerville Independent School District (“Pflugerville ISD”). To the extent the teacher at issue has applied for employment with Pflugerville ISD, the district must release the marked evaluations in Exhibit C to this requestor pursuant to section 21.355(c).

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.”² 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 we marked under section 552.102(a).

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

² The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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 degrees obtained, which must be released, the district must withhold the submitted college transcripts in Exhibit D pursuant to section 552.102(b) of the Government Code.

In summary, if the teacher at issue has applied for employment with Pflugerville ISD, the district must release the evaluations we have marked in Exhibit C to this requestor pursuant to section 21.355(c) of the Education Code. If not, the marked evaluations in Exhibit C must be withheld under section 552.101 of the Government Code in conjunction with section 21.355(a) of the Education Code. The district must withhold the date of birth we have marked under section 552.102(a) of the Government Code. With the exception of the employee’s name, courses taken, and degrees obtained, which must be released, the district must withhold the submitted college transcripts in Exhibit D pursuant to section 552.102(b) of the Government Code. The remaining information must be released.

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,



Debbie Lee
Assistant Attorney General
Open Records Division

DKL/mo

Ref: ID# 794079

Enc. Submitted documents

c: Requestor
(w/o enclosures)-