



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

November 4, 2019

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

OR2019-31010

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# 794998 (Ref. No. LJISD-19-046).

The La Joya Independent School District (the "district"), which you represent, received a request for all personnel records pertaining to a named employee. We understand the district will redact some information pursuant to sections 552.117, 552.130(c), and 552.147 of the Government Code, and pursuant to Open Records Decision No. 684 (2009).<sup>1</sup> You claim some of the submitted information is excepted from disclosure under sections

---

<sup>1</sup> 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). 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 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 serves a previous determination to all governmental bodies authorizing them to withhold certain categories of information, including Form I-9 and attachments under section 552.101 of the Government Code in conjunction with 8 U.S.C. § 1324a, and personal e-mail address under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision. *See* ORD 684.

552.101, 552.102, and 552.107 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.<sup>2</sup>

Initially, we note some of the submitted information is subject to section 552.022 of the Government Code. Section 552.022 provides, in relevant part, as follows:

(a) [T]he following categories of information are public information and not excepted from required public disclosure unless made confidential under this chapter or other law:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

*See* Gov't Code § 552.022(a)(1). The submitted information includes completed investigations and evaluations subject to 552.022(a)(1) that must be released unless it is excepted from disclosure under section 552.108 of the Government Code or expressly made confidential under the Act or other law. *See id.* Although you assert some of the information at issue is excepted from disclosure under section 552.107 of the Government Code, this section is discretionary and does not make information confidential under the Act. *See* Open Records Decision Nos. 676 at 6 (2002) (section 552.107 is not other law for purposes of section 552.022), 665 at 2 n.5 (2000) (discretionary exceptions generally). Therefore, none of the information subject to section 552.022 may be withheld under section 552.107. However, the Texas Supreme Court has held the Texas Rules of Evidence are "other law" that make information expressly confidential for the purposes of section 552.022. *In re City of Georgetown*, 53 S.W.3d 328, 336 (Tex. 2001). Thus, we will consider the applicability of the attorney-client privilege under Texas Rule of Evidence 503 for the information at issue. Additionally, because sections 552.101 and 552.102 of the Government Code make information confidential for purposes of section 552.022, we will consider whether these exceptions apply to the information at issue. Further, we will consider your arguments for the information not subject to section 552.022.

Next, we address the applicability of Texas Rule of Evidence 503 for the information at issue subject to section 552.022 of the Government Code. Texas Rule of Evidence 503(b)(1) provides:

A client has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made to facilitate the rendition of professional legal services to the client:

---

<sup>2</sup> We note the district failed to comply with section 552.301 of the Government Code in requesting a ruling; however, sections 552.101, 552.102, and 552.107 can provide compelling reasons to withhold information sufficient to overcome the presumption of openness caused by a failure to comply with section 552.301. *See* Gov't Code §§ 552.301, .302. Accordingly, we will consider the district's arguments.

- (A) between the client or the client's representative and the client's lawyer or the lawyer's representative;
- (B) between the client's lawyer and the lawyer's representative;
- (C) by the client, the client's representative, the client's lawyer, or the lawyer's representative to a lawyer representing another party in a pending action or that lawyer's representative, if the communications concern a matter of common interest in the pending action;
- (D) between the client's representatives or between the client and the client's representative; or
- (E) among lawyers and their representatives representing the same client.

TEX. R. EVID. 503(b)(1). A communication is "confidential" if is not intended to be disclosed to third persons other than those to whom disclosure is made in furtherance of the rendition of professional legal services to the client or those reasonably necessary for the transmission of the communication. *Id.* 503(a)(5).

Thus, in order to withhold attorney-client privileged information from disclosure under rule 503, a governmental body must (1) show the document is a communication transmitted between privileged parties or reveals a confidential communication; (2) identify the parties involved in the communication; and (3) show the communication is confidential by explaining it was not intended to be disclosed to third persons and it was made in furtherance of the rendition of professional legal services to the client. *See* ORD 676. Upon a demonstration of all three factors, the information is privileged and confidential under rule 503, provided the client has not waived the privilege or the document does not fall within the purview of the exceptions to the privilege enumerated in rule 503(d). *See Huie v. DeShazo*, 922 S.W.2d 920, 923 (Tex. 1996) (privilege extends to entire communication, including facts contained therein); *In re Valero Energy Corp.*, 973 S.W.2d 453, 457 (Tex. App.—Houston [14th Dist] 1988, orig. proceeding) (privilege attaches to complete communication, including factual information).

You assert some of the information subject to section 552.022 of the Government Code consists of a communication between district employees and officials and an attorney for the district. The district informs us the communication was made to facilitate the rendition of professional legal services to the district. Further, the district states the information at issue was intended to be and has remained confidential. Based upon the district's representations and our review, we find the district has demonstrated the applicability of the attorney-client privilege to the information at issue. *Cf. Harlandale Indep. Sch. Dist. v. Cornyn*, 25 S.W.3d 328 (Tex. App.—Austin 2000, pet. denied) (concluding attorney's entire investigative report was protected by attorney-client privilege where attorney was

retained to conduct investigation in her capacity as attorney for purpose of providing legal services and advice). Accordingly, the district may withhold the information it marked under rule 503 of the Texas Rules of Evidence.

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 551.104 of the Open Meetings Act, chapter 551 of the Government Code. Section 551.104 provides, in part, “[t]he certified agenda or tape of a closed meeting is available for public inspection and copying only under a court order issued under Subchapter (b)(3).” *Id.* § 551.104(c). We note the district is not required to submit a certified agenda or tape recording of a closed meeting to this office for review. *See* Open Records Decision No. 495 at 4 (1988) (attorney general lacks authority to review certified agendas or tapes of executive sessions to determine whether a governmental body may withhold such information from disclosure under statutory predecessor to section 552.101). Such information cannot be released to a member of the public in response to an open records request. *See* Attorney General Opinion JM-995 at 5-6 (1988) (public disclosure of certified agenda of closed meeting may be accomplished only under procedures provided in Open Meetings Act). Section 551.146 of the Open Meetings Act makes it a criminal offense to disclose a certified agenda or tape recording of a lawfully closed meeting to a member of the public. *See* Gov’t Code § 551.146(a)-(b); *see also* ORD 495 at 4. Upon review, we find some of the remaining information contains transcripts of an executive closed session of the district’s board of trustees. Therefore, the district must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 551.104 of the Government Code.

Section 552.101 also encompasses information protected by the Medical Practice Act (the “MPA”), subtitle B of title 3 of the Occupations Code, which governs release of medical records. Section 159.002 of the MPA provides, in relevant part:

- (a) A communication between a physician and a patient, relative to or in connection with any professional services as a physician to the patient, is confidential and privileged and may not be disclosed except as provided by this chapter.
- (b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.
- (c) A person who receives information from a confidential communication or record as described by this chapter, other than a person listed in Section 159.004 who is acting on the patient’s behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

Occ. Code § 159.002(a)-(c). Information that is subject to the MPA includes both medical records and information obtained from those medical records. *See id.* §§ 159.002, .004. This office has determined the protection afforded by section 159.002 extends only to records created by either a physician or someone under the supervision of a physician. *See* Open Records Decision Nos. 487 (1987), 370 (1983), 343 (1982). Upon review, we agree some of the remaining information, which you have marked, constitutes confidential medical records under the MPA. Accordingly, the district must withhold the information you have marked under section 552.101 of the Government Code in conjunction with the MPA.

Section 552.101 of the Government Code also encompasses section 21.355 of the Education Code, which provides that “[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 an administrator. *See* Open Records Decision No. 643 (1996). Additionally, a court has concluded that a written reprimand constitutes an evaluation for purposes of section 21.355, as 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.). In Open Records Decision No. 643, we concluded that a “teacher” for purposes of section 21.355 means a person who (1) is required to and does in fact hold a certificate or permit required under chapter 21 of the Education Code, and (2) is teaching at the time of his or her evaluation. *See* ORD 643. In Open Records Decision No. 643, we also 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. *See id.*

You state some of the remaining responsive information consists of confidential evaluations of employees of the district. You inform us the employees at issue were certified as teachers and administrators and were acting in such capacity at the time the evaluations were prepared. Upon review, we find a portion of the information at issue, which we have marked, consists of evaluations of a teacher by the district. Accordingly, the district must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code. However, 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 of the remaining information 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 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.

Educ. Code § 21.048(c-1). Upon review, we find some of the remaining information consists of exam results of a school employee. We have no indication section 21.057 of the Education Code is applicable in this instance. Therefore, the district must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 21.048 of the Education Code.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate and 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. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). This office has also found personal financial information not relating to a financial transaction between an individual and a governmental body is generally private. *See* Open Records Decision Nos. 600 (1992) (employee's designation of retirement beneficiary, choice of insurance carrier, election of optional coverages, direct deposit authorization, 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), 523 (1989) (common-law privacy protects credit reports, financial statements, and other personal financial information), 455 at 9 (1987) (employment applicant's salary information not private), 423 at 2 (1984) (scope of public employee privacy is narrow). We also note the public generally has a legitimate interest in information that relates to public employment and public employees. *See* Open Records Decisions Nos. 562 at 10 (1990) (personnel file information does not involve most intimate aspects of human affairs, but in fact touches on matters of legitimate public concern), 542 (1990), 470 at 4 (1987) (public has legitimate interest in job qualifications and performance of public employees). In *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.—El Paso 1992, writ denied), the court addressed the applicability of the common-law privacy doctrine to files of an investigation of allegations of sexual harassment. The investigation files in *Ellen* contained individual witness statements, an affidavit by the individual accused of the misconduct responding to the allegations, and conclusions of the board of inquiry that conducted the investigation. *Ellen*, 840 S.W.2d at 525. The court ordered the release of the affidavit of the person under investigation and the conclusions of the board of inquiry, stating the public's interest was sufficiently served by the disclosure of such documents. *Id.* In concluding, the *Ellen* court held "the public did not possess a legitimate interest in the identities of the individual witnesses, nor the details of their personal statements beyond

what is contained in the documents that have been ordered released.” *Id.* Thus, if there is an adequate summary of an investigation of alleged sexual harassment, the investigation summary must be released under *Ellen*, along with the statement of the accused. However, the identities of the victims and witnesses of the alleged sexual harassment must be redacted, and their detailed statements must be withheld from disclosure. *See* Open Records Decision Nos. 393 (1983), 339 (1982). However, when no adequate summary exists, detailed statements regarding the allegations must be released, but the identities of victims and witnesses must still be redacted from the statements. In either case, the identity of the individual accused of sexual harassment is not protected from public disclosure. We also note supervisors are generally not witnesses for purposes of *Ellen*, except where their statements appear in a non-supervisory context.

In this instance, some of the remaining information pertains to a sexual harassment investigation and, thus, is subject to the ruling in *Ellen*. Upon review, we find the information at issue does not include an adequate summary of this investigation. Because there is no adequate summary of the investigation, the district must generally release the information at issue. However, the information at issue contains the identities of an alleged sexual harassment victim and witnesses. Accordingly, the district must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy and *Ellen*. *See Ellen*, 840 S.W.2d at 525.

Further, we conclude some of the remaining information not pertaining to the sexual harassment investigation meets the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the district must withhold all public citizens’ dates of birth as well as the additional marked information under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find no portion of the remaining information is highly intimate or embarrassing and of no legitimate public concern, and the district may not withhold it under section 552.101 of the Government Code on the basis of common-law privacy.

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). We note section 552.102(b) applies only to transcripts contained in personnel files maintained by the public school that received the request for information. Accordingly, section 552.102(b) does not apply to the employees’ grade point averages contained in documents other than transcripts, and the district may not withhold the grade point averages at issue under section 552.102(b). *See* Open Records Decision Nos. 649 at 3 (1996) (language of a confidentiality provision controls the scope of its protection), 478 at 2 (1987) (statutory confidentiality requires express language making certain information confidential or stating that information shall not be released to the public). Thus, with the exception of the employee’s name, courses taken, and degrees obtained, the district must

withhold the employee's college transcripts under section 552.102(b) of the Government Code.

As noted above, the district has redacted information under section 552.117(a)(1) of the Government Code pursuant to section 552.024(c)(2) of the Government Code. Section 552.117(a)(1) 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). *Id.* §§ 552.117(a)(1), .024. We note a post office box number is not a "home address" for purposes of section 552.117(a). *See* Open Records Decision No. 622 at 4 (1994) (legislative history makes clear that purpose of Gov't Code § 552.117 is to protect public employees from being harassed at home). Section 552.024(a-1) of the Government Code provides, a "[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. Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body's receipt of the request for information. *See* Open Records Decision No. 530 at 5 (1989). Thus, information may only be withheld under section 552.117(a)(1) only on behalf of a current or former employee or official who made a request for confidentiality under section 552.024 prior to the date of the governmental body's receipt of the request for information. Information may not be withheld under section 552.117(a)(1) on behalf of a current or former employee or official who did not timely request under section 552.024 the information be kept confidential. Therefore, except for the information we marked for release, to the extent the individuals whose information is at issue timely requested confidentiality under section 552.024 of the Government Code, the district must withhold the information you have marked and the additional information we have marked under section 552.117(a)(1) of the Government Code. Conversely, to the extent the individuals at issue did not timely request confidentiality under section 552.024, the district may not withhold the marked information under section 552.117(a)(1).

We note the remaining information includes unredacted information subject to section 552.130(c) of the Government Code. Section 552.130 provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release. Gov't Code § 552.130. Accordingly, the district must withhold the additional information we have marked under section 552.130 of the Government Code.

Section 552.137 of the Government Code excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with

a governmental body” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See id.* § 552.137(a)-(c). The e-mail address at issue does not appear to be the type specifically excluded by subsection (c). Upon review, we find the district must withhold the additional personal e-mail address we have marked under section 552.137 of the Government Code, unless the owner affirmatively consent to its public disclosure.

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.” *See id.* § 552.147(a-1). Upon review, we find the district must withhold the additional social security number of the district employee we have marked under section 552.147(a-1) of the Government Code.

In summary, the district may withhold the information it marked under rule 503 of the Texas Rules of Evidence. The district must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 551.104 of the Government Code. The district must withhold the information you have marked under section 552.101 of the Government Code in conjunction with the MPA. The district must withhold the information we have 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 have marked under section 552.101 of the Government Code in conjunction with section 21.048 of the Education Code. The district must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy and *Ellen*. The district must withhold all public citizens’ dates of birth and the additional marked information 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 degrees obtained, the district must withhold the employee’s college transcripts under section 552.102(b) of the Government Code. With the exception of the information we marked for release, to the extent the individuals whose information is at issue timely requested confidentiality under section 552.024 of the Government Code, the district must withhold the information you have marked and the additional information we have marked under section 552.117(a)(1) of the Government Code. The district must withhold the additional information we have marked under section 552.130 of the Government Code. The district must withhold the additional personal e-mail address we have marked under section 552.137 of the Government Code, unless the owner affirmatively consent to its public disclosure. The district must withhold the additional social security number of the district employee 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 <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,

A handwritten signature in black ink that reads "Kimbell Kesling". The signature is written in a cursive style with a long, sweeping tail on the final letter.

Kimbell Kesling  
Attorney  
Open Records Division

KK/gw

Ref: ID# 794998

Enc. Submitted documents

c: Requestor  
(w/o enclosures)