



KEN PAXTON  
ATTORNEY GENERAL OF TEXAS

January 17, 2020

Mr. Brian S. Nelson  
General Counsel  
Corpus Christi Independent School District  
P.O. Box 110  
Corpus Christi, Texas 78403-0110

OR2020-01746

Dear Mr. Nelson:

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# 806729.

The Corpus Christi Independent School District (the "district") received two requests for information pertaining to a named district employee.<sup>1</sup> You state the district released some information. You claim some of the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.108, 552.115, and 552.117 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the second request is narrower than the first request. Thus, the district need not release information to the second requestor that is not responsive to second request for information.

Next, we note some of the submitted information, which we marked, is not responsive to the present requests for information because it was created after the district received the requests for information. This ruling does not address the public availability of non-responsive information, and the district is not required to release non-responsive information in response to this request.

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 261.201 of the Family Code, which provides, in relevant part:

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<sup>1</sup> We note we have combined these requests, which originally were assigned identification numbers 806727 and 806729, under ID# 806729.

(a) [T]he following information is confidential, is not subject to public release under [the Act], and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201(a). Upon review, we find the information you indicated was used or developed in an investigation conducted by the district's police department (the "department") under chapter 261 of the Family Code, so as to fall within the scope of section 261.201(a). *See id.* §§ 101.003(a) (defining "child" for purposes of section 261.201), 261.001(1), (4) (defining "abuse" and "neglect" for purposes of section 261.201 of Family Code). You have not indicated the department has adopted a rule governing the release of this type of information. Therefore, we assume no such regulation exists. Given that assumption, the responsive information you indicated is confidential under section 261.201 of the Family Code, and the district must withhold it under section 552.101 of the Government Code.<sup>2</sup>

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 responsive 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 you indicated under section 552.101 of the Government Code in conjunction with section 21.048 of the Education Code.<sup>3</sup>

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 and not subject to disclosure under [the Act]." *Id.*

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<sup>2</sup> As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

<sup>3</sup> As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

§ 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 a district employee. You inform us the employee at issue was certified as a teacher and was acting in such capacity at the time the evaluations were prepared. Upon review, we find a portion of the information at issue, which we marked, consists of evaluations of a teacher by the district. 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.<sup>4</sup> We note the remaining information at issue evaluates the employee at issue in his capacity as a coach and not as a teacher. 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. *See* Educ. Code § 21.353 (teachers shall be appraised only on the basis of classroom teaching performance and not in connection with extracurricular activities). 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 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:

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<sup>4</sup> As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

(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.

*Id.* § 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. The remaining responsive information includes 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 you indicated, consists of a person's name and other information that was collected to conduct a criminal history record search under Chapter 22. Accordingly, the district must withhold the information you indicated under section 552.101 of the Government Code in conjunction with section 22.08391 of the Education Code.<sup>5</sup>

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 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 degrees obtained, the district must withhold the submitted college transcripts under section 552.102(b) of the Government Code.<sup>6</sup>

Section 552.115 of the Education Code excepts from disclosure "[a] birth or death record maintained by the bureau of vital statistics of the Texas Department of Health or a local

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<sup>5</sup> As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

<sup>6</sup> As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

registration official[.]” Gov’t Code § 552.115(a). Section 552.115 is applicable only to information maintained by the bureau of vital statistics or local registration officials. *See* Open Records Decision No. 338 (1982) (finding that statutory predecessor to section 552.115 excepted only those birth and death records which are maintained by the bureau of vital statistics and local registration officials). Because section 552.115 of the Government Code does not apply to information held by the district, the district may not withhold the birth certificate in the remaining responsive information on this basis.

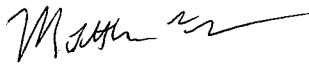
Section 552.117(a)(1) of the Government Code excepts from disclosure the home address and telephone number, emergency contact information, social security number, and family member information of a current or former employee or official of a governmental body who requests this information be kept confidential 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. 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 the information. *See* Open Records Decision No. 530 at 5 (1989). Thus, information may 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 the 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, to the extent the employee at issue timely requested confidentiality under section 552.024 of the Government Code, the district must withhold the information we marked under section 552.117(a)(1) of the Government Code.

In summary, the district must withhold the responsive information you indicated under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. The district must withhold the information you indicated 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 section 21.355 of the Education Code. The district must withhold the information you indicated under section 552.101 of the Government Code in conjunction with section 22.08391 of the Education Code. The district must withhold the employee’s date of birth under section 552.102(a) of the Government Code. With the exception of the employee’s name, courses taken, and degrees obtained, the district must withhold the submitted college transcripts under section 552.102(b) of the Government Code. To the extent the employee at issue timely requested confidentiality under section 552.024 of the Government Code, the district must withhold the information we marked under section 552.117(a)(1) of the Government Code. The district must release the remaining responsive 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,



Matthew Taylor  
Assistant Attorney General  
Open Records Division

MHT/gw

Ref: ID# 806729

Enc. Submitted documents

c: 2 Requestors  
(w/o enclosures)