



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

January 28, 2020

Mr. Darin Darby  
Counsel for the Fort Worth Independent School District  
Escamilla & Poneck, LLP  
700 North St. Mary's Street, Suite 850  
San Antonio, Texas 78205

OR2020-02521

Dear Mr. Darby:

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# 808439 (Ref. No. W003290).

The Fort Worth Independent School District (the "district"), which you represent, received a request for employment records related to a named employee. You state you will release some information to the requestor. You state you will redact information pursuant to sections 552.024(c), 552.130(c), 552.136(c), and 552.147(b) of the Government Code.<sup>1</sup> You further state you will redact information pursuant to the previous determination in Open Records Decision No. 684 (2009).<sup>2</sup> Additionally, you state you have redacted

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<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 552.136(c) of the Government Code allows a governmental body to redact the information described in section 552.136(b) without the necessity of seeking a decision from the attorney general. *See id.* § 552.136(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.136(e). *See id.* § 552.136(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 requesting a decision from this office under the Act. *Id.* § 552.147(b).

<sup>2</sup> Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold certain categories of information without the necessity of requesting an attorney general decision.

information pursuant to the Family Educational Rights and Privacy Act (“FERPA”), section 1232g of title 20 of the United States Code.<sup>3</sup> 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 section 21.355 of the Education Code. Section 21.355(a) provides “[a] document evaluating the performance of a teacher or administrator is confidential[.]” Educ. Code § 21.355(a). Additionally, the Third Court of Appeals has concluded 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. N. E. 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. *See* Open Records Decision No. 643 at 3 (1996). We also determined a “teacher” for purposes of section 21.355 means a person who (1) is required to and does in fact hold a teaching certificate under subchapter B of chapter 21 of the Education Code or a school district teaching permit under section 21.055 and (2) is engaged in the process of teaching, as that term is commonly defined, at the time of the evaluation. *See id.* at 4.

You assert portions of the submitted information evaluate the performance of a teacher who holds the appropriate certificate for the purpose of section 21.355. Upon review, we find some of the submitted information is confidential under section 21.355. Therefore, the district must withhold this information, which we have marked, under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code.<sup>4</sup> However, we find the district has not established any of the remaining information consists of “[a] document evaluating the performance of a teacher or administrator” as contemplated by section 21.355. Accordingly, we conclude the district has not established the remaining information is confidential under section 21.355, and may not withhold any of it under section 552.101 on that ground.

Section 552.101 of the Government Code also encompasses information protected by chapter 411 of the Government Code, which makes confidential criminal history record information (“CHRI”) generated by the National Crime Information Center or by the Texas Crime Information Center. *See* Gov’t Code § 411.083(a). Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal

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<sup>3</sup> The United States Department of Education Family Compliance Office (the “DOE”) has informed this office FERPA does not permit state and local educational authorities to disclose to this office, without parental consent, unredacted, personally identifiable information contained in education records for the purpose of our review in the open records ruling process under the Act. The DOE has determined FERPA determinations must be made by the educational authority in possession of the education records. We have posted a copy of the letter from the DOE to this office on the Attorney General’s website: <https://www.texasattorneygeneral.gov/sites/default/files/files/divisions/open-government/20060725-SDOE-FERPA.pdf>

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

government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual laws with respect to the CHRI it generates. *See id.* Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety (“DPS”) maintains, except that DPS may disseminate this information as provided in chapter 411, subchapter F, or subchapter E-1 of the Government Code. *See Gov’t Code* § 411.083(a). Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090-.127. Thus, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 in conjunction with chapter 411, subchapter F, of the Government Code. Upon review, we find the information we have marked consists of CHRI that is confidential under section 411.083. Thus, the district must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code and federal law.<sup>5</sup> However, we find you have not demonstrated any portion of the remaining information consists of CHRI for purposes of chapter 411 of the Government Code, and the district may not withhold any of the remaining information under section 552.101 of the Government Code on that basis.

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[.]” *Id.* § 552.102(b). We note, however, this exception further provides 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 university transcripts, which we have marked, under section 552.102(b) of the Government Code.<sup>6</sup>

In summary, 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 411.083 of the Government Code and federal law. With the exception of the employee’s name, courses taken, and degrees obtained, the district must withhold the submitted university transcripts, which we have marked, under section 552.102(b) 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.

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

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

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, appearing to read 'Tim Neal', with a stylized flourish at the end.

Tim Neal  
Assistant Attorney General  
Open Records Division

TN/be

Ref: ID# 808439

Enc. Submitted documents

c: Requestor  
(w/o enclosures)