February 5, 2020

Ms. Mia M. Martin
General Counsel
Richardson Independent School District
400 South Greenville Avenue
Richardson, Texas 75081-4198

Dear Ms. Martin:

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# 810033.

The Richardson Independent School District (the “district”) received a request for three categories of information, including the personnel file of a named educator. You state the district does not maintain information responsive to a portion of the request. You also state the district has released some of the requested information. Additionally, you state the district will redact information pursuant to section 552.024(c) of the Government Code. You claim portions of the submitted information are excepted from disclosure under

1 The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. See Econ. Opportunities Dev. Corp. v. Bustamonte, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dism’d); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990), 452 at 3 (1986), 362 at 2 (1983).

2 Section 552.117 of the Government Code excepts from disclosure the home addresses and telephone numbers, emergency contact information, social security numbers, and family member information of current or former officials or employees of a governmental body. See Gov’t Code § 552.117(a)(1). Section 552.024 of the Government Code authorizes a governmental body to withhold information subject to section 552.117 without requesting a decision from this office if the current or former employee or official chooses not to allow public access to the information. See id. § 552.024(c).
sections 552.101 and 552.102 of the Government Code. We have considered the
exceptions you claim and reviewed the submitted representative sample of information. 3

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).
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 contend some of the submitted information consists of a confidential evaluation of the
named teacher by the district. You state the teacher at issue held the appropriate certificate
and was acting as a teacher at the time the evaluation was prepared. Upon review, we find
the information at issue consists of an evaluation of the performance of a teacher pursuant
to section 21.355. Accordingly, the district must withhold the information you marked
under section 552.101 of the Government Code in conjunction with section 21.355 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
Accounts v. Attorney Gen. of Tex., 354 S.W.3d 336 (Tex. 2010). Accordingly, the district
must withhold the employee’s date of birth, which you 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
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 pursuant to section 552.102(b) of the Government Code.

3 We assume the “representative sample” of records submitted to this office is truly representative of the
requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records
letter does not reach, and therefore does not authorize the withholding of, any other requested records to the
extent those records contain substantially different types of information than that submitted to this office.
In summary, the district must withhold the information you marked under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code. The district must withhold the employee’s date of birth you 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 pursuant to section 552.102(b) of the Government Code. The remaining information must be released.

You ask this office to issue a previous determination permitting the district to withhold employees’ dates of birth under section 552.102(a) of the Government Code without the necessity of requesting a decision under section 552.301 of the Government Code. See Gov’t Code § 552.301(a) (allowing a governmental body to withhold information subject to previous determination); Open Records Decision No. 673 (2001) (listing elements of second type of previous determination under section 552.301(a) of the Government Code). After due consideration, we have decided to grant your request on this matter. Therefore, this letter ruling authorizes the district to withhold the dates of birth of current and former district employees under section 552.102(a) of the Government Code when the dates of birth are held in an employment context. We note the right to privacy is a personal right that lapses at an individual’s death. See Moore v. Charles B. Pierce Film Enters., Inc., 589 S.W.2d 489, 491 (Tex. Civ. App.—Texarkana 1979, writ ref’d n.r.e.); see also Open Records Decision Nos. 620 (1993), 272 (1981), 192 (1978). Therefore, this previous determination authorizes the district to withhold dates of birth of living current and former employees of the district. This previous determination is not applicable to dates of birth belonging to deceased former employees of the district. We also note a person or a person’s authorized representative has a special right of access under section 552.023 of the Government Code to information that is protected from public disclosure by laws intended to protect the person’s privacy interests. See Gov’t Code § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). Therefore, this previous determination is not applicable to a date of birth requested by a person or the authorized representative of a person whose date of birth is at issue. So long as the elements of law, fact, and circumstances do not change so as to no longer support the findings set forth above, the district need not ask for a decision from this office again with respect to this type of information. See ORD 673 at 7-8 (listing elements of second type of previous determination under section 552.301(a) of the Government Code).

Finally, you also ask this office to issue a previous determination permitting the district to withhold certain information on employee college transcripts under section 552.102(b) of the Government Code without the necessity of requesting a decision under section 552.301 of the Government Code. We decline to issue such a previous determination at this time.

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,

Alexandra C. Burks
Attorney
Open Records Division

ACB/eb

Ref: ID# 810033

Enc. Submitted documents

c: Requestor
(w/o enclosures)