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ATTORNEY GENERAL OF TEXAS

May 22, 2020

Mr. Michael Roseberry
Counsel for the Corrigan-Camden Independent School District
Sarah Leon & Associates, LLC
2901 Via Fortuna, Suite 475
Austin, Texas 78746

OR2020-14447

Dear Mr. Roseberry:

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# 827003.

The Corrigan-Camden Independent School District (the "district"), which you represent, received a request for a named employee's personnel file. You state the district has released some information. You state the district will redact information pursuant to sections 552.024(c) of the Government Code and Open Records Decision 684 (2009).¹ You claim the requested 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 representative sample of information.²

¹Section 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). Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold certain categories of information, including an e-mail address of a member of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general opinion.

² 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.

Section 552.101 of the Government Code excepts from public disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. Section 552.101 of the Government Code encompasses information protected by other statutes. Chapter 231 of the Family Code pertains to the administration of Title IV-D child support programs and provides the Office of the Attorney General (the “OAG”) is designated as the state’s Title IV-D agency. *See* Fam. Code § 231.001. Section 231.108(a) of the Family Code provides:

(a) . . . all files and records of services provided by the Title IV-D agency under this title, including information concerning a custodial parent, a noncustodial parent, a child, or an alleged or presumed father, are confidential.

Id. § 231.108(a). In this instance, we understand the information at issue was shared between the district and the OAG. You indicate that the district uses this information for the administration and enforcement of a child support program. *See id.* § 231.108(c) (allowing the OAG to release information subject to chapter 231 of the Family Code for purposes directly connected with the administration of child support programs). Based on your arguments and our review of the information at issue, we conclude the district must withhold Exhibit E under section 552.101 of the Government Code in conjunction with section 231.108(a) of the Family 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 information at issue consists of certification exam results of a teacher for the district. 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. However, the district failed to demonstrate any of the remaining information at issue is subject to section 21.048 of the Education Code and the district may not withhold it under section 552.101 of the Government Code on that basis.

Section 552.101 of the Government Code also encompasses section 21.355(a) of the Education Code, which provides “[a] document evaluating the performance of a teacher or administrator is confidential and is not subject to disclosure under [the Act].” *Id.* § 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 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. We note section 21.355 does not apply to evaluations relating to an individual's duties as a coach. *See* Educ. Code § 21.353 (teachers shall be appraised only on basis of classroom teaching performance and not in connection with extracurricular activities).

Upon review, we find the district has failed to demonstrate any of the remaining information evaluates the performance of a teacher or administrator for purposes of section 21.355. Consequently, 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 552.102(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 has 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 you marked 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 transcript pursuant to section 552.102(b) of the Government Code.

We note the remaining information contains information subject to section 552.130 of the Government Code, which provides information relating to a motor vehicle operator's or 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.³

³ The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

Gov't Code § 552.130(a). Upon review, we find the district must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.

Section 552.136 of the Government Code provides, “[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” *Id.* § 552.136(b); *see id.* § 552.136(a) (defining “access device”). Upon review, the district must withhold the bank account numbers we have marked under section 552.136 of the Government Code.

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.” *Id.* § 552.147(a-1). Thus, section 552.147(a-1) makes the social security numbers of school district employees confidential, without such employees being required to first make a confidentiality election under section 552.024 of the Government Code. *Id.* § 552.024(a-1) (school district may not require employee or former employee of district to choose whether to allow public access to employee's or former employee's social security number). Reading sections 552.024(a-1) and 552.147(a-1) together, we conclude section 552.147(a-1) makes confidential the social security numbers of both current and former school district employees. Upon review, we find the district must withhold the social security number of the district employee we have marked under section 552.147(a-1) of the Government Code.

In summary, the district must withhold Exhibit E under section 552.101 of the Government Code in conjunction with section 231.108(a) of the Family 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 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, the district must withhold the submitted college transcript pursuant to section 552.102(b) of the Government Code. The district must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code. The district must withhold the bank account numbers we have marked under section 552.136 of the Government Code. The district must withhold the 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,

Kelly McWethy
Assistant Attorney General
Open Records Division

KM/gw

Ref: ID# 827003

c: Requestor