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ATTORNEY GENERAL OF TEXAS

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Mr. Matthew M. Coleman
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OR2020-21421

Dear Mr. Coleman:

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# 840585.

The Paris Independent School District (the "district"), which you represent, received a request for certain information pertaining to two named individuals. You state you will make some information available to the requestor. You claim the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.116, 552.117, 552.130, 552.136, 552.137, and 552.147 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. Section 552.101 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 and is not subject to disclosure under [the Act]." Educ. Code § 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 have also determined

that for purposes of section 21.355, “administrator” 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. *Id.*

Upon review, we find some of the submitted information consists of evaluations of a teacher and administrator by the district. The information at issue reveals the teacher and administrator at issue held the appropriate certificates for the purpose of section 21.355 and was acting as a teacher and administrator at the time the evaluations were prepared. Accordingly, the district must withhold the information it 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 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 all employees’ dates 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). We must consider whether the Legislature intended the term “professional public school employee” in section 552.102(b) to include a police officer employed by the district. Section 552.102(b) does not define “professional public school employee.” When construing a statute, a court may consider the circumstances under which the Legislature enacted the statute as well as its legislative history. *Id.* § 311.023(2), (3); *City of Rockwall v. Hughes*, 246 S.W.3d 621, 626 n.6 (Tex. 2008). In 1989, the Legislature passed Senate Bill 404 (“S.B. 404”) as an amendment to the Act to include the statutory predecessor to section 552.102(b). The Senate sponsor of S.B. 404, Senator Don Henderson, stated before the Senate Committee for State Affairs to bill was a response to “people trying to get past a teacher’s degree, past a teacher’s hiring, . . . [and] past a school board’s determination that a teacher was qualified to teach[.]” Hearing on S.B. 404 Before the Senate Comm. for State Affairs, 71st Leg., R.S. (February 27, 1989) (statement of Senator Henderson) (recording available from Senate Staff Services Office). During the Senate floor debate of the bill, Senator Henderson further questioned the purposes of “any citizen being able to look at any teacher’s transcript” because “there are several other means by which we say teachers are qualified to teach in this state.” *Id.*; see also Debate on Tex. S.B. 404 on the Floor of the Senate, 71st Leg., R.S. (March 13, 1989) (statement of Senator Henderson describing S.B. 404 as relating to privacy of a teacher’s transcript; statement of Senator Caperton summarizing S.B. 404 as balancing public’s right to know with teacher’s right of privacy) (recording available from Senate Staff Services Office). In addition, Representative Paul J. Hilbert, the House sponsor of S.B. 404, stated during the debate on the House floor that the statute was intended to protect teachers’ college transcripts. See Debate on Tex. S.B. 404 on the Floor of the House, 71st Leg., R.S. (May 10 and 11, 1989) (statements of Representative Hilbert introducing S.B.

404 as applying to transcripts of teachers) (recording available from House Video/Audio Services). Therefore, we believe the legislative history of section 552.102(b) shows the Legislature enacted the predecessor to statute to section 552.102(b) to protect the transcripts of only professional educators, rather than the transcripts of all public school employees. See Open Records Decision No. 526 (1989) (addressing predecessor statute in light of previous lack of exception for “qualifications of professional public school employees to teach”) (emphasis added). Thus, we find the district has not established the former district police officer whose information is at issue is a professional public-school employee. Accordingly, the district may not withhold the college transcripts pertaining to this employee under section 552.102(b). However, with the exception of the other employee’s name, courses taken, and degrees obtained, the district must withhold the college transcripts we indicated pursuant to section 552.102(b) of the Government Code.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or 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. This office has found personal financial information not relating to a financial transaction between an individual and a governmental body is generally highly intimate or embarrassing. See Open Records Decision Nos. 600 (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), 523 (1989) (common-law privacy protects credit report, financial statements, and other personal financial information), 373 (1983) (sources of income not related to financial transaction between individual and governmental body protected under common-law privacy). We also note the public generally has a legitimate interest in information that relates to public employment and public employees. See Open Records Decision 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), 444 at 5-6 (1986) (public has legitimate interest in knowing reasons for dismissal, demotion, promotion, or resignation of public employees).

Upon review, we find some of the remaining information satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the district must generally withhold the information it marked and the additional information we marked under section 552.101 of the Government Code in conjunction with common-law privacy.¹ However, it is not clear whether the listed payroll deductions and benefits reflect mandatory participation by the employee or are the employee’s voluntary financial decisions. Thus, to the extent this information reflects the employee’s voluntary allocation of salary to optional investment, retirement, or other financial programs offered by the district, the

¹ As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

district must withhold the information it marked, and the additional information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, to the extent the information at issue reflects the employee's mandatory participation in the district's retirement program or benefits paid by the district, the deduction amounts are not confidential and may not be withheld on that basis.

You assert some of the remaining information is excepted from disclosure under section 552.116 of the Government Code. Section 552.116 provides as follows:

(a) An audit working paper of an audit of the state auditor or the auditor of a state agency, an institution of higher education as defined by Section 61.003, Education Code, a county, municipality, a school district, a hospital district, or a joint board operating under Section 22.074, Transportation Code, including any audit relating to the criminal history background check of a public school employee, is excepted from the requirements of Section 552.021. If information is an audit working paper is also maintained in another record, that other record is not excepted from the requirements of Section 552.021 by this section.

(b) In this section:

(1) "Audit" means an audit authorized or required by a statute of this state or the United States, the charter or an ordinance of a municipality, an order of the commissioners court of a county, the bylaws adopted by or other action of the governing board of a hospital district, a resolution or other action of a board of trustees of a school district, including an audit by the district relating to the criminal history background check of a public school employee, or a resolution or other action of a joint board described by Subsection

(a) and includes an investigation.

(2) "Audit working paper" includes all information, documentary or otherwise, prepared or maintained in conducting an audit or preparing an audit report, including:

(A) intra-agency and interagency communications; and

(B) drafts of the audit report or portions of those drafts.

Gov't Code § 552.116. You state the information you marked was prepared or maintained by the district in connection with the state mandated criminal background check. We note section 22.083 of the Education Code authorizes a school district to obtain criminal history record information relating to its employees. *See* Educ. Code § 22.083(a-1). You contend the marked information pertains to an audit by the district relating to the criminal history background check of a public school employee. Gov't Code § 552.116(b)(1). Based upon your representations, we understand you to claim the marked information consists of audit

working papers. *See id.* § 552.116(b)(2). Thus, we conclude the district may withhold the information it marked under section 552.116 of the Government Code.

Section 552.117(a)(2) of the Government Code excepts from public disclosure the home address, home telephone number, emergency contact information, and social security number of a peace officer, as well as information that reveals whether the peace officer has family members, regardless of whether the peace officer complies with sections 552.024 and 552.1175 of the Government Code. *See id.* § 552.117(a)(2). Section 552.117(a)(2) applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure. In this instance, however, it is unclear whether the individual whose information is at issue is currently a licensed peace officer as defined by article 2.12 of the Code of Criminal Procedure. Accordingly, to the extent the individual whose information is at issue is a currently licensed peace officer as defined by article 2.12, the district must withhold the information we marked and indicated under section 552.117(a)(2) of the Government Code. Conversely, to the extent the individual whose information is at issue is no longer a licensed peace officer as defined by article 2.12, then the district may not withhold the marked information under section 552.117(a)(2). In either event, the district has failed to demonstrate the applicability of section 552.117(a)(2) to the remaining information, and thus, the district may not withhold it on that basis.

If the marked information pertains to an individual who is no longer a licensed peace officer, then the information at issue may be subject to section 552.117(a)(1) 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). *See id.* §§ 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. We also 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). 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 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 who did not timely request under section 552.024 the information be kept confidential. Therefore, to the extent the individual whose information is at issue is no longer a peace officer as defined by article 2.12 and to the extent this individual timely requested confidentiality under section 552.024 of the Government Code, the district must

withhold the information we marked and indicated under section 552.117(a)(1) of the Government Code. Conversely, to the extent the individual at issue is no longer a peace officer as defined by article 2.12 and did not timely request confidentiality under section 552.024, the district may not withhold the information at issue under section 552.117(a)(1). In addition, to the extent the other individual whose information is at issue timely requested confidentiality under section 552.024 of the Government Code, the district must withhold the information we marked and indicated under section 552.117(a)(1) of the Government Code. Conversely, to the extent the other individual at issue did not timely request confidentiality under section 552.024, the district may not withhold the information we marked and indicated under section 552.117(a)(1). Further, we find the district has failed to demonstrate the applicability of section 552.117(a)(1) of the Government Code to any of the remaining information, and thus, the district may not withhold it on that basis.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or a 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(a). Accordingly, the district must withhold the motor vehicle record information we marked and indicated 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 is not excluded by subsection (c). Therefore, the district must withhold the personal e-mail address it marked under section 552.137 of the Government Code, unless the owner affirmatively consents to its public disclosure.

Section 552.147(a-1) of the Government Code provides, "[f]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. Thus, the district must withhold the social security numbers it marked under section 552.147(a-1) of the Government Code.

In summary, the district must withhold the information it marked under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code. The district must withhold all employees' dates 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 college transcripts we indicated pursuant to section 552.102(b) of the Government Code. The district must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law

privacy, unless the information at issue reflects the employee's mandatory participation in the district's retirement program or benefits paid for the district. The district may withhold the information it marked under section 552.116 of the Government Code. To the extent the individual whose information is at issue is a currently licensed peace officer as defined by article 2.12, the district must withhold the information we marked and indicated under section 552.117(a)(2) of the Government Code. To the extent the individual whose information is at issue is no longer a peace officer as defined by article 2.12 and to the extent this individual timely requested confidentiality under section 552.024 of the Government Code, the district must withhold the information we marked and indicated under section 552.117(a)(1) of the Government Code. To the extent the other individual whose information is at issue timely requested confidentiality under section 552.024 of the Government Code, the district must withhold the information we marked and indicated under section 552.117(a)(1) of the Government Code. The district must withhold the motor vehicle record information we marked and indicated under section 552.130 of the Government Code. The district must withhold the personal e-mail address it marked under section 552.137 of the Government Code, unless the owner affirmatively consents to its public disclosure. The district must withhold the social security numbers it 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,

Kimbell Kesling
Assistant Attorney General
Open Records Division

KK/be

Ref: ID# 840585

Enc. Submitted documents

c: Requestor
(w/o enclosures)