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ATTORNEY GENERAL OF TEXAS

December 15, 2020

Mr. Matthew M. Coleman
Counsel for the Fort Stockton Independent School District
Eichelbaum Wardell Hansen Powell & Mehl, P.C.
4201 West Parmer Lane, Suite A-100
Austin, Texas 78727

OR2020-31332

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# 857228.

The Fort Stockton Independent School District (the "district"), which you represent, received a request for information pertaining to a former employee. The district states it will withhold information pursuant to section 552.130(c) of the Government Code.¹ The district claims some of the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.117, and 552.147 of the Government Code. We have considered the claimed exceptions 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). This office has interpreted section 21.355 to apply to any document that evaluates, as that term is commonly understood, the performance of an administrator. *See* Open Records Decision No. 643 at 3 (1996). We

¹ 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* Gov't Code § 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).

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. *Id.* Upon review, we find the district has not established any of the submitted 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 any of the submitted information is confidential under section 21.355, and the district may not withhold it under section 552.101 on that ground.

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). The district must withhold the submitted date of birth under section 552.102(a) of the Government Code.

Section 552.102(b) of the Government Code excepts from 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.* With the exception of the information that reveals the employee’s name, the degree obtained, and the courses taken, the district must withhold pages 15 and 16 of the submitted documents under section 552.102(b) of the Government Code. *See* Open Records Decision No. 526 (1989) (addressing statutory predecessor).

Section 552.117(a)(1) 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 who request that this information be kept confidential under section 552.024 of the Government Code. Gov’t Code § 552.117(a)(1). Whether information is protected by section 552.117(a)(1) must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). The submitted information includes an election by the named employee to withhold certain personal information. We note section 552.117(a)(1) is not applicable to some of the information that the district seeks to withhold on that ground. Therefore, the district may not withhold this information, which we have marked for release, on that ground. Nevertheless, we agree the district must withhold the remaining information it has marked, as well as the information we have marked, under section 552.117(a)(1) of the Government Code.

In summary, the district must withhold the following: (1) the information it has marked under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code; (2) the submitted date of birth under section 552.102(a) of the Government

Code; (3) with the exception of the information that reveals the employee's name, the degree obtained, and the courses taken, pages 15 and 16 of the submitted documents under section 552.102(b) of the Government Code; and (4) with the exception of the information we have marked for release, the information marked under section 552.117(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,

James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/jm

Ref: ID# 857228

Enc. Submitted documents

c: Requestor
(w/o enclosures)