KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 2, 2022

Ms. Kristi Godden
Counsel for the La Joya Independent School District
O'Hanlon, Demerath, & Castillo
808 West Avenue
Austin, Texas 78701

OR2022-03191

Dear Ms. Godden:

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# 928538 (Ref. No. 21-047).

The La Joya Independent School District (the "district"), which you represent, received a request for information pertaining to two named employees. 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 public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses section 21.355 of the Education Code, which 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). 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). 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. North East Indep. Sch. Dist.*, 212 S.W.3d 364 (Tex. App.—Austin 2006, no pet.). 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* ORD 643 at 4. We also determined for purposes of section 21.355, an "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.*

We understand you to assert the submitted information is confidential under section 21.355 of the Education Code. You have submitted documentation reflecting, the teacher at issue held the appropriate certification at the time of the evaluations. Further, we understand the teacher at issue was engaged in the process of teaching at the time of the respective evaluations. *See id.* Based upon these representations and our review, we find the district must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code.[1] However, we find you have failed to demonstrate the remaining information at issue consists of "[a] document evaluating the performance of a teacher or administrator" as contemplated by section 21.355. Therefore, the district may not withhold any of the remaining information under section 552.101 in conjunction with section 21.355.

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 employees' dates of birth in the remaining information under section 552.102(a) of the Government Code.[2]

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. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). This office has found personal financial information not relating to a financial transaction between an individual and a governmental body is excepted from

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[1] As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

[2] As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

required public disclosure under common-law privacy. *See, e.g.*, Open Records Decision Nos. 545 (1990) (common-law privacy protects mortgage payments, assets, bills, and credit history), 523 (1989) (common-law privacy protects credit reports, financial statements, and other personal financial information). Upon review, we find some of the remaining information satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Therefore, the district must withhold the information we indicated under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find the district has not demonstrated any of the remaining information at issue is highly intimate or embarrassing and not of legitimate public concern. Thus, the district may not withhold any portion of the remaining information under section 552.101 in conjunction with common-law privacy.

After reviewing the remaining information, we have determined no novel or complex issue exists in the remaining information. Thus, we address other applicable exceptions in a summary ruling.[3]

The district must withhold the submitted I-9 form and attachments under section 552.101 of the Government Code in conjunction with section 1324a of title 8 of the United States Code. The district must withhold the information we marked under section 552.101 of the Government Code in conjunction with the Medical Practice Act. The district must withhold the submitted educational transcripts under section 552.102(b) of the Government Code, except for the information that reveals the employee's name, the degree obtained, and the courses taken. If the employees whose information is at issue timely requested confidentiality under section 552.024 of the Government Code and the cellular telephone services are not paid for by a governmental body, the district must withhold the information we indicated under section 552.117(a)(1) of the Government Code. The district must withhold the information we indicated under section 552.130 of the Government Code. The district must withhold the personal e-mail addresses in the remaining information under section 552.137 of the Government Code, unless the individuals to whom the e-mail addresses belong affirmatively consent to their release or subsection (c) applies. The district must withhold the social security number of the district employees in the remaining information 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-

[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).

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,

Emily Kunst
Assistant Attorney General
Open Records Division

EK/mo

Ref: ID# 928538

Enc. Submitted documents

c: Requestor
(w/o enclosures)