



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 13, 2022

Ms. Priscilla de Mata
Counsel for the Socorro Independent School District
Blanco Ordoñez Mata & Wechsler, P.C.
5715 Cromo Drive
El Paso, Texas 79912

OR2022-20207

Dear Ms. De Mata:

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# 959271 (ORR No. 2022-253).

The Socorro Independent School District (the "district"), which you represent, received a request for disciplinary records related to a named former employee.¹ You claim the submitted information is excepted from disclosure under sections 552.101, 552.102, and 552.117 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note you have redacted portions of the submitted information. You state you have redacted student-identifying information pursuant to the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code.²

¹ You state, and provide documentation demonstrating, the district sought and received clarification of the information requested. *See* Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); *see also* *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

² The United States Department of Education Family Policy Compliance Office (the "DOE") has informed this office FERPA does not permit state and local educational authorities to disclose to this office, without parental or student consent, unredacted, personally identifiable information contained in education records for the purpose of our review in the open records ruling process under the Act. The DOE has determined FERPA determinations must be made by the educational authority in possession of the education records. A copy of this letter may be found on the Office of the Attorney General's website:

However, you have also redacted other information. Pursuant to section 552.301 of the Government Code, a governmental body that seeks to withhold requested information must submit to this office a copy of the information, labeled to indicate which exceptions apply to which parts of the copy, unless the governmental body has received a previous determination for the information at issue. Gov't Code § 552.301(a), (e)(1)(D). You do not assert, nor does our review of our records indicate, the district has been granted a previous determination to withhold the remaining information you have redacted without seeking a ruling from this office. *See id.* § 552.301(a); Open Records Decision No. 673 (2000). In this instance, we are able to discern the nature of the information that has been redacted; thus, being deprived of that information does not inhibit our ability to make a ruling. Nevertheless, be advised that a failure to provide this office with requested information generally deprives us of the ability to determine whether information may be withheld and leaves this office with no alternative other than ordering the redacted information be released. *See* Gov't Code § 552.301(e)(1)(D) (governmental body must provide this office with copy of "specific information requested"). Thus, in the future, the district should refrain from redacting, without authorization, any information it submits to this office in seeking an open records ruling.

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, which 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 concluded a "teacher" for purposes of section 21.355 means a person who (1) is required to and does in fact hold a certificate or permit required under chapter 21 of the Education Code and (2) is teaching at the time of his or her evaluation. *See id.* 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.*

You claim the submitted information consists of evaluations that are confidential under section 21.355 of the Education Code. Upon review, we find some of the submitted information consists of an evaluation of a teacher by the district. The information at issue reveals the individual at issue was acting as a teacher at the time the evaluation was prepared. However, we are unable to determine if the individual at issue held the appropriate certification at the time of the evaluations. Thus, to the extent the individual at issue held the appropriate certification under chapter 21 of the Education Code at the time of the evaluation at issue, the district must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 21.355 of the

Education Code.³ To the extent the individual at issue did not hold the appropriate certification, the district may not withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code. In either instance, we find you have failed to demonstrate the remaining information consists of documents evaluating the performance of a teacher or administrator for purposes of section 21.355 of the Education Code. Accordingly, the district may not withhold any portion 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 section 552.102(a) of the Government Code is not applicable to any portion of the submitted information. Accordingly, the district may not withhold any of the information at issue on that basis.

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 current or honorably retired peace officer, as well as information that reveals whether the current or honorably retired peace officer has family members, regardless of whether the peace officer complies with sections 552.024 and 552.1175 of the Government Code. *See* Gov’t Code §§ 552.117(a)(2); *see also id.* § 552.003(1-b)) (defining “honorably retired” for purposes of the Act). Section 552.117(a)(2) applies to current or honorably retired peace officers as defined by article 2.12 of the Code of Criminal Procedure. We note, for purposes of section 552.117, “family member” means a spouse, minor child, or adult child who resides in the person’s home. *See id.* § 552.117(c) (providing “family member” has meaning assigned by Fin. Code § 31.006(d). It is unclear whether the employee at issue is a current or honorably retired peace officer as defined by article 2.12 of the Code of Criminal Procedure. Accordingly, to the extent the information we have marked pertains to an employee that is currently a licensed or honorably retired peace officer as defined by article 2.12, the district must withhold this information under section 552.117(a)(2) of the Government Code. However, if the employee is not a currently licensed or honorably retired peace officer, then the information at issue may be subject to section 552.117(a)(1) of the Government Code. Furthermore, we find no portion of the remaining information consists of a home address or telephone number, emergency contact information, or family member information pertaining to a current or former district employee. Therefore, the district may not withhold any portion of the remaining information under section 552.117 of the Government Code.

³ In this instance, as our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

To the extent the individual is not a current or honorably retired peace officer, the information at issue may be subject to section 552.117(a)(1) of the Government Code. Section 552.117(a)(1) of the Government Code 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. 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). Therefore, information may be withheld under section 552.117(a)(1) only on behalf of a current or former employee or official 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 or official who did not timely request under section 552.024 the information be kept confidential. Accordingly, to the extent the individual whose information is at issue timely requested confidentiality under section 552.024 of the Government Code, the district must withhold the information we have marked under section 552.117(a)(1) of the Government Code. Conversely, to the extent the individual at issue is not a currently licensed or honorably retired peace officer and did not timely request confidentiality under section 552.024, the district may not withhold the information at issue under section 552.117 of the Government Code. Furthermore, we find no portion of the remaining information consists of a home address or telephone number, emergency contact information, or family member information pertaining to a current or former district employee. Therefore, the district may not withhold any portion of the remaining information under section 552.117 of the Government Code.

Section 552.1175 of the Government Code protects the home address, home telephone number, emergency contact information, date of birth, social security number, and family member information of certain individuals, when that information is held by a governmental body in a non-employment capacity and the individual elects to keep the information confidential.⁴ *Id.* § 552.1175. Section 552.1175 applies, in part, to “current or honorably retired peace officers as defined by Article 2.12, Code of Criminal Procedure, or special investigators as described by Article 2.122, Code of Criminal Procedure.” *Id.* § 552.1175(a)(1); *see also id.* § 552.003(1-b)) (defining “honorably retired” for purposes of the Act). We note, for purposes of section 552.1175, “family member” means a spouse, minor child, or adult child who resides in the person’s home. *Cf. id.* § 552.117(c).

⁴ 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).

Accordingly, to the extent the information we have marked pertains to individuals who are subject to section 552.1175(a) of the Government Code and who elect to restrict access to the information in accordance with section 552.1175(b) of the Government Code, the district must withhold the information we have marked under section 552.1175 of the Government Code. Conversely, if the individuals whose information is at issue are not subject to section 552.1175(a) or do not elect to restrict access to their information in accordance with section 552.1175(b), then the information at issue may not be withheld under section 552.1175 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). *Id.* § 552.137(a)-(c). The e-mail address at issue is not a type specifically excluded by section 552.137(c) of the Government Code. Accordingly, the district must withhold the e-mail address we have marked under section 552.137 of the Government Code, unless the owner of the e-mail address affirmatively consents to its disclosure.

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 we have marked under section 552.147(a-1) of the Government Code.

In summary, to the extent the individual at issue held the appropriate certification under chapter 21 of the Education Code at the time of the evaluation at issue, the district must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code. To the extent the information we have marked pertains to a current or former employee that is a current or honorably retired peace officer as defined by article 2.12 of the Code of Criminal Procedure, the district must withhold this information under section 552.117(a)(2) of the Government Code. To the extent the individual whose information is at issue is not a currently licensed or honorably retired peace officer but timely requested confidentiality under section 552.024 of the Government Code, the district must withhold the information we have marked under section 552.117(a)(1) of the Government Code. To the extent the information we have marked pertains to individuals who are subject to section 552.1175(a) of the Government Code and who elect to restrict access to the information in accordance with section 552.1175(b) of the Government Code, the district must withhold the information we have marked under section 552.1175 of the Government Code. The district must withhold the e-mail address we have marked under section 552.137 of the Government Code, unless the owner of the e-mail address affirmatively consents to its disclosure. The

district must withhold the social security number 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,

Tim Neal
Assistant Attorney General
Open Records Division

TN/mo

Ref: ID# 959271

Enc. Submitted documents

c: Requestor
(w/o enclosures)