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Exception(s) Personnel File – Confidential Information

1. Open Records Decision No. 643 (1996) — section 21.355 of the Education Code makes confidential any document that evaluates, as that term is commonly understood, the performance of a teacher or administrator. The term “teacher,” as used in section 21.355, means an individual who is required to hold and does hold a teaching certificate or school district teaching permit under subchapter B of chapter 21, and who is engaged in teaching at the time of the evaluation; an “administrator” is a person who is required to hold and does hold an administrator’s certificate under subchapter B of chapter 21 and is performing the functions of an administrator at the time of the evaluation.
2. Section 552.101 + Common-Law Privacy - Information that (1) contains highly intimate or embarrassing facts, which if publicized would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. This includes:
 - a. Dates of birth of public citizens. The Third Court of Appeals in Paxton v. City of Dallas, No. 03-13-00546-CV, 2015 WL 3394061, at *3 (Tex. App.—Austin May 22, 2015, pet. denied) (mem. op.) determined dates of birth of public citizens are protected by common law privacy. Under Texas Comptroller, section 552.102(a) excepts from disclosure the birth date of an employee of a governmental body in a record maintained by his or her employer in an employment context.
 - b. Personal financial information is intimate and embarrassing (for example: mortgage payments, assets, bills, credit history, beneficiaries of employee’s retirement benefits, optional insurance coverage, and direct deposit authorization). However, a determination must be made whether there is a legitimate public interest in the release of the personal financial information.
 - c. Medical information or information indicating disabilities or specific illnesses is intimate and embarrassing (for example: specific prescription drugs, illnesses, operations, physical handicaps, psychiatric treatment of mental disorders, injuries to sexual organs, pregnancy, and suicide attempts). However, a determination must be made whether there is a legitimate public interest in the release of the personal medical information.
 - d. Information relating to a sexual harassment investigation in the workplace.
3. Open Records Decision No. 684 (2009) – section 552.101 of the Gov’t Code previous determination makes confidential direct deposit authorization form, employment eligibility verification form I-9, W-2 and W-4 Forms, fingerprints, motor vehicle record information, access device information, private email addresses, military discharge records.
 - a. Section 1324a of Title 8 of the United States Code - Employment Eligibility Verification “Form I-9” and appended ID forms.
 - b. Section 6103(A) of Title 26 of the United States Code - “Tax return information,” including a W-4 or W-2.
 - c. Section 560.003 of the Government Code - Fingerprints and other “biometric identifiers.”
 - d. Section 552.130 - Information relating to motor vehicle records and personal identification documents issued by an agency of the State of Texas or another state or country.

- e. Section 552.136 - Credit card, debit card, charge card, or access device number (for example: bank account numbers, personal identification numbers (PINs), and insurance policy numbers are all protected by this exception).
 - f. Section 552.137 - Most e-mail addresses of members of the public, unless the member of the public has consented to its release.
 - g. Section 552.140 - A military veteran's Department of Defense Form DD-214 or other military discharge record if it first comes into your possession on or after September 1, 2003.
- 4. Section 552.117 (a)(1), if employee declines public access to the information in the custody of the governmental body that relates to the person's home address, home telephone number, emergency contact information, or social security number, or that reveals whether the person has family members. In conjunction with the addition of section 552.024(a-1), the Eighty-third Legislature amended section 552.147 of the Government Code; therefore, under section 552.024, the social security number of an employee of a school district is confidential. Section 552.147, the social security number of a living individual.
 - 5. Section 159.002 of the Medical Practice Act (MPA), Subtitle B Of Title 3 Of The Occupations Code - A communication between a physician and a patient, relative to or in connection with any professional services as a physician to the patient or a record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician.
 - 6. Section 611.002 of the Health & Safety Code - Communications between a patient and a mental health professional and records of the identity, diagnosis or treatment of a mental health patient created or maintained by a mental health professional.
 - 7. Americans with Disabilities Act of 1990 ("ADA") - Certain medical records pertaining to an employee's disability (The ADA provides that this confidential information must be (1) collected and maintained on separate forms, (2) kept in separate medical files and (3) treated as a confidential medical record.)
 - 8. Section 552.122 - A test item developed by an educational institution that is funded wholly or in part by state revenue, a licensing agency, or governmental body.
 - 9. Section 552.152 - Information in the custody of a governmental body that relates to an employee or officer of the governmental body if, under the specific circumstances pertaining to the employee or officer, disclosure of the information would subject the employee or officer to a substantial threat of physical harm.