



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 21, 2006

Ms. Melody G. Chappell  
Beaumont Independent School District  
Wells, Peyton, Greenberg & Hunt, L.L.P.  
P.O. Box 3708  
Beaumont, Texas 77704-3708

OR2006-15055

Dear Ms. Chappell:

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# 267551.

The Beaumont Independent School District (the "district"), which you represent, received a request for information pertaining to a named district employee. You state that the district has released some of the requested information but believe that the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered your arguments and reviewed the submitted information. We have also considered comments submitted by the employee at issue. *See Gov't Code § 552.304* (interested party may submit comments stating why information should or should not be released).

Initially, we note that some of the submitted documents appear to be educational records. The United States Department of Education Family Policy Compliance Office (the "DOE") recently informed this office that the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code, does not permit state and local educational authorities to disclose to this office, without parental consent, unredacted, personally identifiable information contained in education records for the purpose of our review in the open records ruling process under the Act.<sup>1</sup> Consequently, education records responsive to a request under the Act should not be submitted to this office in unredacted

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<sup>1</sup>A copy of this letter may be found on the Office of the Attorney General's website: [http://www.oag.state.tx.us/opinopen/og\\_resources.shtml](http://www.oag.state.tx.us/opinopen/og_resources.shtml).

form, that is, in a form in which “personally identifiable information” is disclosed. *See* 34 C.F.R. § 99.3 (defining “personally identifiable information”). Because our office is prohibited from reviewing education records to determine whether appropriate redactions under FERPA have been made, we will not address the applicability of FERPA to any of the submitted documents. Such determinations under FERPA must be made by the educational authority in possession of the records. We will, however, address the applicability of your arguments.

Section 552.101 of the Government Code exempts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.”<sup>2</sup> Gov’t Code § 552.101. Section 552.101 encompasses information protected by other statutes, such as section 21.355 of the Education Code. Section 21.355 provides that “a document evaluating the performance of a teacher or administrator is confidential.” Educ. Code § 21.355. 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 an administrator. *See* Open Records Decision No. 643 (1996). In Open Records Decision No. 643, we determined that 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 or a school district teaching permit under section 21.055 and who is engaged in the process of teaching, as that term is commonly defined, at the time of the evaluation. *See id.* at 4. We also determined that the word “administrator” in 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 of an administrator, as that term is commonly defined, at the time of the evaluation. *Id.* The Third Court of Appeals has held that a written reprimand constitutes an evaluation for purposes of section 21.355. *See Abbott v. North East Indep. Sch. Dist.*, No. 03-04-00744-CV, 2006 WL 1293545 at \*3 (Tex. App.—Austin May 12, 2006, no pet.).

We understand you to contend that the submitted information constitutes teacher or administrator evaluations for purposes of section 21.355. You do not inform us, however, whether the employee who is the subject of the evaluations held a teacher’s certificate or permit or an administrator’s certificate under subchapter B of chapter 21 of the Education Code and was performing the functions of a teacher or administrator at the time of each evaluation. Nevertheless, to the extent that the employee in question held a teacher’s certificate or permit or an administrator’s certificate and was functioning as a teacher or administrator at the time of a given evaluation, we find that the documents that we have marked constitute evaluations that are confidential under section 21.355 of the Education Code and must be withheld from disclosure under section 552.101 of the Government Code. *See id.* at 4. To the extent that these documents do not satisfy these criteria, they may not be withheld under section 552.101 in conjunction with section 21.355. Further, we find that the

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<sup>2</sup>Unlike other exceptions to disclosure, this office will raise section 552.101 on behalf of a governmental body, because the Act prescribes criminal penalties for the release of confidential information. *See* Gov’t Code §§ 552.007, .352; Open Records Decision No. 325 at 2 (1982).

district has not demonstrated that the remaining documents constitute evaluations for purposes of section 21.355. Therefore, none of the remaining information may be withheld on that basis.

We note that some of the remaining information may be excepted from public disclosure under section 552.117 of the Government Code. Section 552.117(a)(1) of the Government Code excepts from disclosure the current and former home addresses and telephone numbers, 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. Gov't Code § 552.117(a)(1). 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 information. *See* Open Records Decision No. 530 at 5 (1989). If the employee has timely elected to keep her personal information confidential, pursuant to section 552.117 the district must withhold the information we have marked. However, the district may not withhold this information if the employee has not made a timely election.

In summary, the district must determine if any of the submitted information is subject to FERPA. The district must withhold the documents 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 employee timely elected confidentiality, the district must also withhold the information we have marked under section 552.117 of the Government Code. The remaining information must be released to the requestor.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by *filing suit in Travis County within 30 calendar days*. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the

requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Office of the Attorney General at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



L. Joseph James  
Assistant Attorney General  
Open Records Division

LJJ/dh

Ref: ID# 267551

Enc. Submitted documents

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