



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 21, 2009

Mr. D. Craig Wood  
Walsh, Brown, Schulze & Aldridge, P.C.  
P.O. Box 460606  
San Antonio, Texas 78246

OR2009-00817

Dear Mr. Wood:

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# 333310.

The Marion Independent School District (the "district"), which you represent, received a request for information pertaining to grievance appeals by two named educators. You state the district has redacted some information pursuant to the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232g.<sup>1</sup> You also state the district is withholding two letters of reprimand in accordance with the previous determination issued in Open Records Letter No. 2008-13969 (2008).<sup>2</sup> You claim portions of the submitted information are

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<sup>1</sup>We note our office is prohibited from reviewing these education records to determine whether appropriate redactions under FERPA have been made; therefore, we will not address the applicability of FERPA to any of the submitted records.

<sup>2</sup>*See* Gov't Code § 552.301(a); Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

excepted from disclosure under sections 552.101 and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.<sup>3</sup>

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 information protected by other statutes. Section 21.355 of the Education Code provides that "a document evaluating the performance of a teacher or administrator is confidential." Educ. Code § 21.355. This office has interpreted this section to apply to any document that evaluates, as that term is commonly understood, the performance of a teacher or administrator. Open Records Decision No. 643 (1996). In addition, the court has concluded a written reprimand constitutes an evaluation for purposes of section 21.355 because "it reflects the principal's judgment regarding [a teacher's] actions, gives corrective direction, and provides for further review." *North East Indep. Sch. Dist. v. Abbott*, 212 S.W.3d 364 (Tex. App.—Austin 2006, no pet.). In Open Records Decision No. 643, we determined a "teacher" for purposes of section 21.355 means a person who (1) 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 (2) is engaged in the process of teaching, as that term is commonly defined, at the time of the evaluation. See ORD 643 at 4.

You assert the document labeled AG-0001 constitutes a written reprimand of an educator. You inform us, and have submitted documentation showing, the named educator holds a valid state of Texas Educator Certificate. Based on your representations and our review, we agree document AG-0001 is an evaluation of an employee who was performing the functions of a teacher at the time of the evaluation. Thus, document AG-0001 is confidential under section 21.355 of the Education Code and must be withheld under section 552.101 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 affirmatively consents to its release or the e-mail address is of a type specifically excluded by subsection (c). Gov't Code § 552.137(a)-(c). You have marked the information you seek to withhold under section 552.137. We note some of the marked information does not constitute e-mail addresses. Thus, this information, which we have marked for release, may not be withheld under section 552.137. You do not inform us the owners of the e-mail addresses you have marked have affirmatively consented to the release of their e-mail addresses. Accordingly, the district must withhold the e-mail addresses you have marked in documents AG-0002

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<sup>3</sup>We assume you have released to the requestor any other responsive information, to the extent it exists. If not, then the district must do so immediately. See Gov't Code §§ 552.301, .302; Open Records Decision No. 664 (2000).

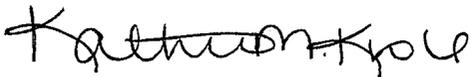
through AG-0013, as well as the e-mail address we have marked, under section 552.137 of the Government Code, unless the district receives consent for their release.

In summary, the district must withhold document AG-0001 under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code. The district must withhold the marked e-mail addresses in documents AG-0002 through AG-0013 under section 552.137 of the Government Code, unless the district receives consent for their release. The remaining information must be released to the requestor.

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 [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Katherine M. Kroll  
Assistant Attorney General  
Open Records Division

KMK/eeg

Ref: ID# 333310

Enc. Submitted documents

c: Requestor  
(w/o enclosures)