



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 13, 2009

Mr. Wayne D. Haglund  
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P.O. Box 713  
Lufkin, Texas 75902-0713

OR2009-03370

Dear Mr. Haglund:

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# 337284.

The Centerville Independent School District (the "district"), which you represent, received a request for the personnel file of the requestor's client and the results of a specified survey. You state that you will release the requested personnel file to the requestor. We note that the district has redacted student-identifying information pursuant to the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code.<sup>1</sup> You claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information. We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This

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<sup>1</sup>The United States Department of Education Family Policy Compliance Office (the "DOE") has informed this office that FERPA 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. The DOE has determined that FERPA determinations must be made by the educational authority in possession of the education records. We have posted a copy of the letter from the DOE to this office on the Attorney General's website: <http://www.oag.state.tx.us/open/20060725usdoe.pdf>.

exception encompasses information that other statutes make confidential. You raise section 552.101 in conjunction with section 21.355 of the Education Code, which 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 at 3 (1996). In Open Records Decision No. 643, we determined that 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 id.* at 4. We also determined that an “administrator” for purposes of section 21.355 means a person who (1) is required to and does in fact hold an administrator’s certificate under subchapter B of chapter 21 of the Education Code and (2) is performing the functions of an administrator, as that term is commonly defined, at the time of the evaluation. *Id.*

You contend that portions of the submitted survey evaluate the job performance of district administrators and teachers. Although a portion of the survey questions and staff comments pertain to district administrators and teachers, the questions asked of the staff and their related comments cannot be categorized or perceived as an evaluation of the performance of a principal or any other district teacher or administrator. Thus, we conclude that this information is not confidential under section 21.355 of the Education Code, and may not be withheld under section 552.101 on this basis.

We note that section 552.117 of the Government Code may be applicable to some of the remaining information. Section 552.117(a)(1) 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 of the Government Code. Gov’t § 552.117(a)(1). Whether information is protected by section 552.117(a)(1) must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Thus, pursuant to section 552.117(a)(1), if the employees at issue made a timely election to keep their information confidential, then the district must withhold the employees’ personal information. Accordingly, the information we have marked must be withheld under section 552.117(a)(1) if that section applies. However, you may not withhold this information under section 552.117(a)(1) if the employees did not make a timely election to keep their information confidential. 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,



Adam Leiber  
Assistant Attorney General  
Open Records Division

ACL/jb

Ref: ID# 337284

Enc. Submitted documents

c: Requestor  
(w/o enclosures)