



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 17, 2009

Ms. Bertha Bailey Whatley
Chief Legal Counsel and Public Information Officer
Forth Worth Independent School District
100 North University Drive
Fort Worth, Texas 76107

OR2009-03487

Dear Ms. Whatley:

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# 338247.

The Fort Worth Independent School District (the "district") received a request for a named teacher's personnel file; specifically including (1) a specified letter, (2) a written reprimand from the district's athletic department to the teacher regarding a specified incident, (3) any documents the district has received from the Equal Employment Opportunity Commission pertaining to the teacher's complaint, (4) all information from meetings between the teacher and other named individuals, and (5) all information provided by the district's athletic department to the University Interscholastic League related to a specified hearing involving the teacher. You claim that the some of the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.¹

¹ We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Initially, we note that the representative sample you have submitted for our review consists solely of the written reprimand from the district's athletic department to the teacher regarding the specified incident and the teacher's performance evaluations. To the extent any additional information responsive to the other categories of the request existed on the date the district received this request, we assume that you have released it to the requestor. If you have not released any such information, you must release it at this time. See Gov't Code §§ 552.301(a), .302; see also Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

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 exception encompasses information made confidential by statute. 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. 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.). This section applies 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 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.

You state, and have submitted information which establishes, that the named teacher held the appropriate teaching certificate at the time of the evaluations. The submitted information consists of evaluations of the named teacher's performance as a teacher. Based on your representations and our review of the information at issue, we conclude that the submitted information consists of teacher evaluations for the purposes of section 21.355. Therefore, the district must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 21.355.

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,

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,



Ana Carolina Vieira
Assistant Attorney General
Open Records Division

ACV/dls

Ref: ID# 338247

Enc. Submitted documents

c: Requestor
(w/o enclosures)