



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 31, 2009

Ms. Laura C. Rodriguez
Walsh, Anderson, Aldridge & Gallegos, P.C.
P.O. Box 460606
San Antonio, Texas 78246

OR2009-12275

Dear Ms. Rodriguez:

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# 354436.

The Southwest Independent School District (the "district"), which you represent, received a request for all information pertaining to teachers and administrators placed on administrative leave since August 2006. You further state that some of the requested information has been redacted pursuant to the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code.¹ 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.

Initially, we note the requestor has agreed to the redaction of addresses, phone numbers, and the identity of an individual that made a report to Child Protective Services. Therefore, any of this information within the submitted documents is not responsive to the present request

¹ 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>.

for information. Our ruling does not address this non-responsive information, and the district need not release this information in response to the requests.

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. 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. 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 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 that opinion, we concluded that a teacher is someone who is required to hold and does hold a certificate or permit required under chapter 21 of the Education Code and is teaching at the time of his or her evaluation. *Id.* You claim AG-0001 through AG-0022 are confidential under section 21.355 of the Education Code. However, we note that the submitted letters inform the teachers at issue that they are being placed on administrative leave, suspended, or being reassigned within the district pending the outcome of the investigations into various complaints. The letters also direct the teachers not to talk to certain individuals. This information does not constitute an evaluation of the individuals’ performance as a teacher for the purposes of section 21.355. Accordingly, we find that you have failed to demonstrate that AG-0001 through AG-0032 constitute teacher evaluations subject to section 21.355 of the Education Code, and they may not be withheld under section 552.101 of the Government Code on that basis.

Section 552.101 of the Government Code encompasses section 261.201(a) of the Family Code, which provides as follows:

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under

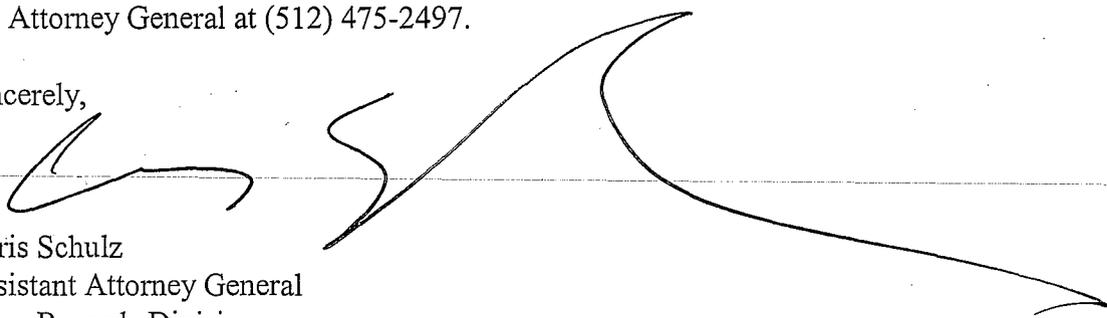
this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201(a); *see also id.* § 261.001(1), (4) (defining “abuse” and “neglect” for purposes of Family Code chapter 261). We note the district is not an agency authorized to conduct a chapter 261 investigation. *See id.* §§ 261.103 (listing agencies that may conduct child abuse investigations), .406. However, you state AG-0023 through AG-0032 involve a report of alleged or suspected abuse made to the Texas Department of Family and Protective Services. Based on your representations and our review, we find AG-0023 through AG-0032 are within the scope of section 261.201 of the Family Code. Therefore, the district must withhold this information under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. As you raise no further exceptions against disclosure, the remaining information must be released.

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,



Chris Schulz
Assistant Attorney General
Open Records Division

CS/cc

Ref: ID# 354436

Enc. Submitted documents

cc: Requestor
(w/o enclosures)