



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

September 4, 2009

Mr. Robb D. Decker
Walsh, Anderson, Brown, Aldridge & Gallegos, P.C.
P.O. Box 460606
San Antonio, Texas 78246

OR2009-12513

Dear Mr. Decker:

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# 354422.

The East Central Independent School District (the "district"), which you represent, received a request for information pertaining to employees who were placed on administrative leave over a specified period of time.¹ You claim that the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note, and you acknowledge, that the requestor has excluded from her request medical information, the identities of individuals who reported violations of law, personal e-mail addresses, social security numbers, as well as the home address, home and cellular telephone numbers, and family member information of employees. Accordingly, any such information within the submitted information is not responsive to the present request for information. The district need not release nonresponsive information and this ruling will not address it.

Next, we note you have redacted student-identifying information in the submitted information pursuant to the Family Educational Rights and Privacy Act ("FERPA"), 20

¹We note that the district received clarification regarding this request. *See* Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information); *see also* Open Records Decision No. 663 (1999) (discussing tolling of deadlines during period in which governmental body is awaiting clarification).

U.S.C. § 1232g. The United States Department of Education Family Policy Compliance Office has informed this office that FERPA does not permit state and local educational authorities to disclose to this office, without parental or an adult student's consent, unredacted, personally identifiable information contained in education records for the purpose of our review in the open records ruling process under the Act.² Consequently, state and local educational authorities that receive a request for education records from a member of the public under the Act must not submit education records to this office in unredacted form, that is; in a form in which "personally identifiable information" is disclosed. *See* 34 C.F.R. § 99.3 (defining "personally identifiable information"). FERPA is generally not applicable to law enforcement records maintained for a law enforcement purpose. *See* 20 U.S.C. § 1232g(a)(4)(B)(ii); 34 C.F.R. §§ 99.3, 99.8. However, records created by a law enforcement entity for a law enforcement purpose that are maintained by a component of an educational agency or institution other than the law enforcement unit or that are used exclusively for a non-law enforcement purpose such as a disciplinary proceeding are not records of the law enforcement unit and, therefore, are education records subject to FERPA. *See id.* § 99.8(b)(2). 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 information. Such determinations under FERPA must be made by the educational authority in possession of the education records.

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, such as 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 (1996). In Open Records Decision No. 643, we determined 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* ORD 643 at 4. We also determined 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.* In addition, the Third Court of Appeals has held 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.).

²A copy of this letter may be found on the Office of the Attorney General's website: <http://www.oag.state.tx.us/open/20060725usdoe.pdf>.

You assert the documents labeled AG-001 through AG-003, AG-008 through AG-0011, AG-0019, AG-0029, AG-0030, and AG-0036 through AG-0039 consist of evaluations of district employees. We agree that AG-0036 through AG-0039 are evaluations for purposes of section 21.355. However we are unable to determine if the district employee whose evaluations are at issue held a teaching or administrator's certificate under subchapter B of chapter 21 of the Education Code at the time of the evaluations. Furthermore we are unable to determine if the district employee at issue was engaged in the process of teaching or performing the functions of an administrator at the time of the evaluations. Thus, if the employee at issue held a teaching or administrator's certificate and was engaged in the process of teaching or performing the functions of an administrator at the time of the evaluations, the documents labeled AG-0036 through AG-0039 are confidential under section 21.355 of the Education Code, and must be withheld under section 552.101 of the Government Code. To the extent this employee did not hold a requisite certificate, or was not engaged in the process of teaching or performing the functions of an administrator, AG-0036 through AG-0039 are not confidential under section 21.355, and may not be withheld under section 552.101 of the Government Code. The documents labeled AG-001 through AG-003, AG-008 through AG-0011, AG-0019, AG-0029, and AG-0030 do not constitute evaluations for purposes of section 21.355; thus, they may not be withheld under section 552.101 in conjunction with section 21.355.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state the documents labeled AG-004 through AG-007, AG-0012 through AG-0018, AG-0020 through AG-0028, and AG-0031 through AG-0035 pertain to concluded investigations conducted by the district's police department that did not result in convictions or deferred adjudications. Based on your representations, we conclude section 552.108(a)(2) is applicable to the documents labeled AG-004 through AG-007, AG-0012 through AG-0018, AG-0020 through AG-0028, and AG-0031 through AG-0035

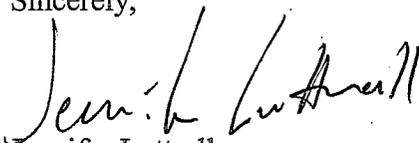
Section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). *See* Open Records Decision No. 127 (1976) (summarizing types of information made public by *Houston Chronicle*). Thus, with the exception of basic information the district may withhold the documents labeled AG-004 through AG-007, AG-0012 through AG-0018, AG-0020 through AG-0028, and AG-0031 through AG-0035 pursuant to section 552.108(a)(2) of the Government Code.

In summary, if the employee at issue held a teaching or administrator's certificate and was engaged in the process of teaching or performing the functions of an administrator at the time of the evaluations, the documents labeled AG-0026 through AG-0039 are confidential under section 21.355 of the Education Code, and must be withheld under section 552.101 of the Government Code. With the exception of basic information the district may withhold the documents labeled AG-004 through AG-007, AG-0012 through AG-0018, AG-0020 through AG-0028, and AG-0031 through AG-0035 pursuant to section 552.108(a)(2) of the Government Code.³ 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, toll free, at (888) 672-6787.

Sincerely,



Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/dls

Ref: ID# 354422

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³As our ruling is dispositive, we need not address your remaining claim against disclosure.