



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 6, 2010

Mr. Gary Allmon Grimes
Schuereberg & Grimes, P.C.
For Mesquite ISD
120 West Main, Suite 201
Mesquite, Texas 75149

OR2010-00249

Dear Mr. Grimes:

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# 366371.

The Mesquite Independent School District (the "district"), which you represent, received a request for all documents pertaining to the requestor's child, including interoffice communications and information regarding two specified incidents. You claim the submitted notes and letters of reprimand are 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 you have submitted information responsive to only the portions of the request for information pertaining to interoffice communications and the two specified incidents. To the extent any additional information responsive to the entire request existed on the date the district received this request, we assume you have released it. If you have not released any such information, you must do so 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 section encompasses information protected by other statutes, such as section 21.355 of the Education Code, which provides "[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. The Third Court of Appeals has held a written reprimand constitutes an evaluation for purposes of section 21.355. *See Abbott v. North East Indep. Sch. Dist.*, 212 S.W.3rd 364 (Tex. App.—Austin, 2006).

You assert the submitted notes and letters of reprimand are confidential under section 21.355. You have failed to demonstrate, however, how the submitted notes constitute an evaluation for purposes of section 21.355. Consequently, the submitted notes may not be withheld under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code. As you have claimed no other exceptions to disclosure, the submitted notes must be released.

With regard to the remaining letters of reprimand, we agree these documents are an evaluation for purposes of section 21.355. However, you do not state, or provide documentation showing, the district employee whose evaluation is at issue held a teaching certificate under subchapter B of chapter 21 of the Education Code at the time of the evaluation. Furthermore, you do not state, or provide documentation showing, the district employee at issue was engaged in the process of teaching at the time of the evaluation. Thus, if the employee at issue did not hold a teaching certificate or was not engaged in the process of teaching at the time of the evaluation, the submitted letters of reprimand are not confidential under section 21.355 of the Education Code and must be released. To the extent this employee held the requisite certificate and was engaged in the process of teaching at the time of the evaluation, the submitted letters of reprimand are confidential under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code.

We note, however, you state the district has redacted student-identifying information from the submitted letters of reprimand pursuant to the Family Educational Rights and Privacy Act (“FERPA”), section 1232g of title 20 of the United States Code.¹ Based on the district’s

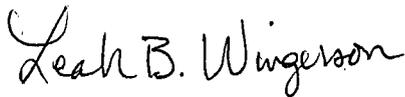
¹The United States Department of Education Family Policy Compliance Office (the “DOE”) has informed this office FERPA does not permit state and local educational authorities to disclose to this office, without parental consent, unredacted, personally identifiable information contained in education records for the purpose of our review in the open records ruling process under the Act. The DOE has determined 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>.

actions, we understand the district is treating the letters of reprimand as education records. See 20 U.S.C. § 1232g(a)(4)(A) (defining "education records"). A parent has a right of access to his or her own child's education records and that right prevails over inconsistent provisions of state law. 20 U.S.C. § 1232g(a)(1)(A) (granting parents affirmative right of access to their children's education records); see 34 C.F.R. § 99.3 (defining "parent"); see also *Equal Employment Opportunity Comm'n v. City of Orange, Tex.*, 905 F. Supp. 381, 382 (E.D. Tex. 1995) (holding FERPA prevails over inconsistent provision of state law); see also Open Records Decision No. 431 (1985) (stating information subject to right of access under FERPA may not be withheld pursuant to inconsistent provision under the Act). In this instance, the requestor is a parent of the student whose identifying information has been redacted from the letters of reprimand. Thus, the requestor has a right of access to the letters of reprimand as education records of the requestor's child, and that access prevails over the confidentiality granted by section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code. Consequently, the letters of reprimand must be released to this requestor.²

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,



Leah B. Wingerson
Assistant Attorney General
Open Records Division

LBW/dls

²Because this information is generally confidential with respect to the general public, if the district receives another request for this particular information from a different requestor, the district should again seek a decision from this office.

Ref: ID# 366371

Enc. Submitted documents

c: Requestor
(w/o enclosures)