



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 4, 2010

Mr. Thomas L. Schatte
Professional Standards Administrator
Killeen Independent School District
P.O. Box 967
Killeen, Texas 76540-0967

OR2010-16749

Dear Mr. Schatte:

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# 401352.

The Killeen Independent School District (the "district") received six requests for the personnel files of specified individuals. You explain the district will make responsive information available to the requestor after redactions are made in accordance with section 552.024 of the Government Code.¹ You claim the submitted information is excepted from disclosure under sections 552.101 and 552.102 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.²

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. The court

¹Section 552.024 of the Government Code authorizes a governmental body to redact the home addresses and telephone numbers of current or former officials or employees of a governmental body who request that this information be kept confidential without the necessity of requesting a decision from this office. Gov't Code § 552.024(c); *see id.* §§ 552.024(c-1) (requestor may appeal governmental body's decision to withhold information under section 552.024(c) to attorney general), .024(c-2) (governmental body withholding information pursuant to section 552.024(c) must provide certain notice to the requestor).

²We assume the "representative sample" of information 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 those records contain substantially different types of information than those submitted to this office.

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 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 that decision, we concluded a "teacher" for purposes of section 21.355 means a person who is required to and does in fact 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.* at 4. Additionally, we determined that for the purposes of section 21.355, the word "administrator" means a person who is required to and does in fact hold an administrator's certificate under chapter 21 of the Education Code, and is performing the functions of an administrator at the time of the evaluation. *Id.* at 4. We further determined that "teacher interns, teacher trainees, librarians, educational aids and counselors cannot be teachers or administrators for purposes of section 21.355." *Id.* at 5.

You contend the submitted information you have marked consists of confidential evaluations of the named teachers and administrators by the district. You inform us the named teachers and administrators at issue were certified as teachers and administrators by the State Board of Educator Certification and were acting as a teacher or administrator at the time that some of the evaluations were prepared. However, we note each of the exhibits contain information that section 21.355 of the Education Code does not make confidential. Exhibits 1, 2, 4, and 5 contain records that do not evaluate the teacher or administrator the records pertain to. Exhibit 2 also contains an evaluation of a counselor. However, counselors cannot be considered a teacher or administrator for purposes of section 21.355 of the Education Code. *See* ORD 643 at 5. Exhibit 4 also contains a reprimand of a teacher which relates to the teacher's duties as a coach. Upon review, we conclude you have failed to demonstrate how this information is a reprimand as contemplated by section 21.355 of the Education Code. *See* Educ. Code § 21.353 (teachers shall be appraised only on basis of classroom teaching performance and not in connection with extracurricular activities). Exhibits 3 and 6 contain evaluations of teachers who were not teaching at the time of the evaluations' creation. In fact, you explain the educator at issue in exhibit 6 "is currently the Special Education Coordinator" and "has never worked as a teacher" in the district. Therefore, the district may not withhold the information we have marked for release under section 21.355 of the Education Code in conjunction with section 552.101 of the Government Code. As you make no further arguments against disclosure for this information, it must be released to the requestor. However, the remainder of the submitted information you have marked does constitute confidential evaluations of teachers and administrators, and as such, must be withheld under section 21.355 of the Education Code in conjunction with section 552.101 of the Government Code.

We note that the United States Department of Education Family Policy Compliance Office (the "DOE") has informed this office that the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232g, 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.³ See 20 U.S.C. § 1232g(b); see also *id.* § 1232g(a)(4)(A) (defining “education records”); Open Records Decision No. 462 at 15 (1987). 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”).

We further note the information we have marked for release in exhibit 6 contains student identifying information. Because the DOE has prohibited our office from reviewing an education record to determine whether appropriate redactions under FERPA have been made, we will not address the applicability of FERPA to any of the submitted records. The DOE has determined that FERPA determinations must be made by the educational authority in possession of the education records.

We also note some of the information we have marked for release in exhibits 2, 4, 5, and 6 may be subject to section 552.117(a)(1) of the Government Code.⁴ Section 552.117(a)(1) excepts from disclosure the home address and telephone number, social security number, and family member information of a current or former employee of a governmental body who requests this information be kept confidential under section 552.024. See Gov’t Code § 552.117(a)(1). Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body’s receipt of the request for the information. See Open Records Decision No. 530 at 5 (1989). Thus, information may only be withheld under section 552.117(a)(1) on behalf of a current or former employee who made a request for confidentiality under section 552.024 prior to the date of the governmental body’s receipt of the request for the information. Information may not be withheld under section 552.117(a)(1) on behalf of a current or former employee who did not timely request under section 552.024 that the information be kept confidential. Therefore, if the employees to whom the information pertains timely requested confidentiality under section 552.024, then the district must withhold the information we have marked in exhibits 2, 4, 5, and 6 under section 552.117(a)(1). If the employees did not timely elect to withhold their personal information, then the district may not withhold the marked information under section 552.117(a)(1) of the Government Code.

The remaining submitted information in each exhibit consists of college transcripts subject to section 552.102(b) of the Government Code, which excepts from disclosure “a transcript from an institution of higher education maintained in the personnel file of a professional public school employee.” Gov’t Code § 552.102(b). However, section 552.102(b) further

³A copy of this letter may be found on the Office of the Attorney General’s website at <http://www.oag.state.tx.us/open/20060725usdoe.pdf>.

⁴The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

provides, that "the degree obtained or the curriculum on a transcript in the personnel file of the employee" are not excepted from disclosure. *Id.* Thus, with the exception of the information that reveals the employee's name, the degree obtained, and the courses taken, the district must withhold the transcripts you have marked under section 552.102(b). *See* Open Records Decision No. 526 (1989).

In summary, with the exception of the information we marked for release, the district must withhold the information it marked under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code. In the information we have marked for release, the district must withhold the information we have marked in exhibits 2, 4, 5, and 6 under section 552.117(a)(1) if the employees to whom the information pertains timely requested confidentiality under section 552.024. If the employees did not timely elect to withhold personal information, then the district may not withhold the marked information under section 552.117(a)(1) of the Government Code. With the exception of the information that reveals the employee's name, the degree obtained, and the courses taken, the district must withhold the transcripts you have marked under section 552.102(b).

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,



Sean Nottingham
Assistant Attorney General
Open Records Division

SN/eeg

Ref: ID# 401352

Enc. Submitted documents

c: Requestor
(w/o enclosures)