



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 10, 2012

Ms. Haley Turner
Counsel for the Killeen ISD
Walsh, Anderson, Gallegos, Green and Trevino, P.C.
P.O. Box 2156
Austin, Texas 78768

OR2012-10606

Dear Ms. Turner:

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# 459678.

The Killeen Independent School District (the "district"), which you represent, received a request for (1) the personnel files of three named employees of the district and (2) records related to staff development in which the named employees participated.¹ You state social security numbers have been redacted from the submitted documents pursuant to section 552.147 of the Government Code.² You claim 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 information you submitted.

We first note that, although you state the submitted information consists of representative samples, the submitted records are not representative of all the information to which the requestor seeks access, including the named employees' personnel files in general and specified records regarding staff development activities in which they participated. Please be advised this open records letter ruling is applicable only to the types of information you have submitted for our review. *See* Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988). This ruling does not authorize the district to withhold any other records to which the requestor seeks access, to the extent any such records contain substantially different types of information than the records you submitted to this office. *See* Gov't Code § 552.302 (where request for attorney general decision does not comply with requirements of Gov't

¹You note the requestor excluded from the scope of this request certain personally identifiable and other information, including transcripts, formal observations, and home addresses and telephone numbers.

²We note section 552.147(b) authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act.

Code § 552.301, information at issue is presumed to be public). We therefore assume the district has released any other types of records that are responsive to the present request, to the extent such records existed when the district received the request. If not, then the district must release any such records immediately.³ *See id.* §§ 552.221, .301, .302; Open Records Decision No. 664 (2000).

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 other statutes make confidential. You claim section 552.101 in conjunction with section 21.048 of the Education Code, which provides in part:

The results of an examination administered under this section are confidential and are not subject to disclosure under Chapter 552, Government Code, unless:

- (1) the disclosure is regarding notification to a parent of the assignment of an uncertified teacher to a classroom as required by Section 21.057; or
- (2) the educator has failed the examination more than five times.

Educ. Code § 21.048(c-1). You state the information submitted as Exhibit 3 consists of the results of teacher certification examinations. You also state subsections 21.048(c-1)(1) and (2) are not applicable in this instance. Based on your representations and our review, we conclude the district must withhold Exhibit 3 under section 552.101 of the Government Code in conjunction with section 21.048(c-1) of the Education Code.

You also claim section 552.101 in conjunction with section 21.355 of the Education Code. Section 21.355(a) provides that “[a] document evaluating the performance of a teacher or administrator is confidential.” *Id.* § 21.355(a). 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). We have determined that for purposes of section 21.355, “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. We also have determined that “administrator,” for purposes of 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

³We note the Act does not require a governmental body to release information that did not exist when it received a request or create responsive information. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dism’d); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

administrator, as that term is commonly defined, at the time of the evaluation. *Id.* The Third Court of Appeals 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.” See *North East Indep. Sch. Dist. v. Abbott*, 212 S.W.3d 364 (Tex. App.—Austin 2006, no pet.).

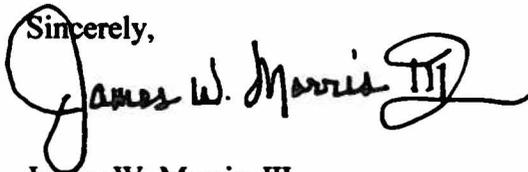
You contend the documents submitted as Exhibit 2 evaluate the performance of certified teachers and administrators. You state the employees concerned were acting in those capacities when the evaluative documents were created. You have provided documentation of the employees’ certifications. Based on your representations and documentation and our review, we conclude the district must withhold Exhibit 2 under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code.

In summary, the district must withhold (1) Exhibit 3 under section 552.101 of the Government Code in conjunction with section 21.048(c-1) of the Education Code and (2) Exhibit 2 under section 552.101 in conjunction with section 21.355 of the Education Code.

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,



James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/bhf

Ref: ID# 459678

Enc: Submitted documents

c: Requestor
(w/o enclosures)