ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 20, 2013

Mr. Miles J. LeBlanc
Assistant General Counsel
Houston Independent School District
4400 West 18th Street
Houston, Texas 77092-8501

OR2013-04633

Dear Mr. LeBlanc:

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# 481821.

The Houston Independent School District (the "district") received a request for eight categories of information regarding the district's Information Technology Department employees, information regarding a specified employee, and certain e-mails and communications regarding the district's E-Rate program. You state you have released a completed audit report that is responsive to the request. You claim the submitted information is excepted from disclosure under sections 552.101, 552.116, and 552.139 of the Government Code.[1] We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note you have only submitted information pertaining to four of the eight categories of the request. To the extent information responsive to the remainder of the request existed on the date the district received the request, we assume you have released it. *See* 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). If you have not released any such information, you must do so at this time. *See* Gov't Code §§ 552.301(a), .302.

[1]We note, although you also raise section 552.022 of the Government Code, section 552.022 is not an exception to disclosure. Rather, section 552.022 enumerates categories of information that are not excepted from disclosure unless they are made confidential under the Act or other law. *See* Gov't Code § 552.022.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 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(a). Additionally, the courts have concluded that a written reprimand constitutes an evaluation for purposes of section 21.355 as 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 Open Records Decision No. 643, we determined that 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 id.* at 4. In Open Records Decision No. 643, this office also concluded that an administrator is someone who is required to hold and does hold a certificate required under chapter 21 of the Education Code and is administering at the time of his or her evaluation. *Id.* at 4.

You assert attachments 1, 2, and 3 consist of evaluations of an administrator. However, you inform us the employee at issue did not hold the requisite certificate under chapter 21 of the Education Code. Therefore, attachments 1, 2, and 3 may not be withheld under section 552.101 of the Government Code on this basis. You assert attachment 7 contains information relating to a specific teacher's "Educational Value Added Analysis System" [EVAAS] score, and that this information relates to the evaluation of a teacher. You explain the teacher's EVAAS score is derived from value-added data that quantify the academic growth of students assigned to a specific teacher. You further explain that insufficient student academic growth is evaluative of a teacher's performance. The submitted information reflects the employee at issue was a teacher at the time of the evaluation; however, you do not state or provide documentation showing that the employee held the requisite certificate under chapter 21 of the Education Code. Thus, we rule conditionally. If the employee at issue held the requisite certificate at the time of the evaluations at issue, the district must withhold the information we have marked in attachment 7 under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code. If the employee at issue did not hold the requisite certificate at the time of the evaluations at issue, the information we have marked in attachment 7 is not confidential under section 21.355 and may not be withheld under section 552.101 of the Government Code on this basis. In either case, we find none of the remaining information in attachment 7 consists of a teacher evaluation for the purposes of section 21.355. Accordingly, none of the remaining information may be withheld under section 552.101 on this basis.

Section 552.116 of the Government Code provides as follows:

> (a) An audit working paper of an audit of the state auditor or the auditor of a state agency, an institution of higher education as defined by Section 61.003, Education Code, a county, a municipality, a school district, a hospital district, or a joint board operating under Section 22.074, Transportation Code, including any audit relating to the criminal history background check of a public school employee, is excepted from [required public disclosure]. If information in an audit working paper is also maintained in another record, that other record is not excepted from [public disclosure] by this section.
>
> (b) In this section:
>
> > (1) "Audit" means an audit authorized or required by a statute of this state or the United States, the charter or an ordinance of a municipality, an order of the commissioners court of a county, the bylaws adopted by or other action of the governing board of a hospital district, a resolution or other action of a board of trustees of a school district, including an audit by the district relating to the criminal history background check of a public school employee, or a resolution or other action of a joint board described by Subsection (a) and includes an investigation.
> >
> > (2) "Audit working paper" includes all information, documentary or otherwise, prepared or maintained in conducting an audit or preparing an audit report, including:
> >
> > > (A) intra-agency and interagency communications; and
> > >
> > > (B) drafts of the audit report or portions of those drafts.

Gov't Code § 552.116. For the purposes of section 552.116, a school district must establish that an audit is authorized or required by a resolution or other action of a board of trustees of a school district. You assert the information in attachments 5 and 6 pertains to an audit conducted by an outside consultant on behalf of the district. However, you do not inform us how the information at issue was prepared or is maintained in relation to an audit authorized or required by any of the laws or authorities specified in section 552.116(b)(1). Thus, we find you have not demonstrated the information at issue constitutes an audit or audit working papers for the purpose of section 552.116. Accordingly, the district may not withhold any of the information at issue under section 552.116 of the Government Code.

Section 552.139 of the Government Code provides, in part:

> (a) Information is excepted from [required public disclosure] if it is information that relates to computer network security, to restricted

> information under Section 2059.055 [of the Government Code], or to the design, operation, or defense of a computer network.
>
> (b) The following information is confidential:
>
> > (1) a computer network vulnerability report; and
> >
> > (2) any other assessment of the extent to which data processing operations, a computer, a computer program, network, system, or system interface, or software of a governmental body or of a contractor of a governmental body is vulnerable to unauthorized access or harm, including an assessment of the extent to which the governmental body's or contractor's electronically stored information is vulnerable to alteration, damage, erasure, or inappropriate use[.]

Id. § 552.139(a), (b)(1)-(2). Section 2059.055 of the Government Code provides in pertinent part:

> (b) Network security information is confidential under this section if the information is:
>
> > (1) related to passwords, personal identification numbers, access codes, encryption, or other components of the security system of a state agency;
> >
> > (2) collected, assembled, or maintained by or for a governmental entity to prevent, detect, or investigate criminal activity; or
> >
> > (3) related to an assessment, made by or for a governmental entity or maintained by a governmental entity, of the vulnerability of a network to criminal activity.

Id. § 2059.055(b). You seek to withhold certain information in attachment 8 under section 552.139. Upon review, we find the information we have marked relates to computer network security. Accordingly, the district must withhold the information we have marked under section 552.139 of the Government Code. However, we find you have failed to demonstrate how any of the remaining information at issue relates to computer network security or the design, operation, or defense of a computer network or consists of a computer network vulnerability report or assessment as contemplated by section 552.139. Accordingly, none of the remaining information may be withheld on the basis of section 552.139 of the Government Code.

We note some of the information at issue may be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Open Records Decision No. 180 at 3 (1977). A governmental

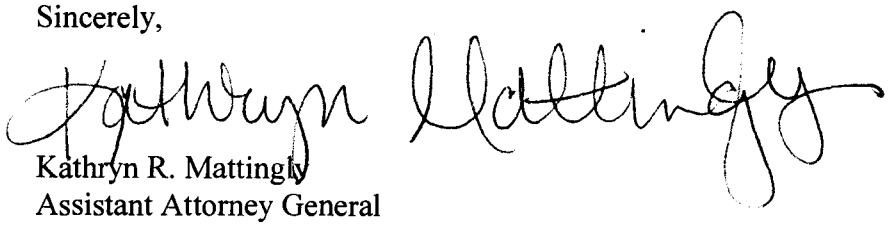
body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.*; *see* Open Records Decision No. 109 (1975). If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit.

In summary, if the employee at issue held the requisite certificate at the time of the evaluations at issue, the district must withhold the information we have marked in attachment 7 under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code. The district must withhold the information we have marked under section 552.139 of the Government Code. The remaining information must be released; however, any information subject to copyright may only be released in accordance with copyright law.

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,



Kathryn R. Mattingly
Assistant Attorney General
Open Records Division

KRM/bhf

Ref: ID# 481821

Enc. Submitted documents

c: Requestor
(w/o enclosures)