



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 1, 2013

Ms. Amanda M. Bigbee  
General Counsel  
Keller Independent School District  
350 Keller Parkway  
Keller, Texas 76248

OR2013-07166

Dear Ms. Bigbee:

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# 490142.

The Keller Independent School District (the "district") received a request for observation summaries and growth plans pertaining to teachers at a specified school for the 2012-2013 school year and the names of all teachers who resigned from the same school during the same time period. You state the district has released some responsive information to the requestor. 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.<sup>1</sup>

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. Section 552.101 encompasses information protected by other statutes, such as section 21.355 of the Education Code. Section 21.355 provides that "[a]

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<sup>1</sup>We assume that the "representative sample" of records 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 that those records contain substantially different types of information than that submitted to this office.

document evaluating the performance of a teacher or administrator is confidential.” Educ. Code § 21.355. In addition, a court 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 administrator. Open Records Decision No. 643 (1996). We have determined a teacher is someone who is required to hold and does hold a certificate or permit required under chapter 21 of the Education Code and is teaching at the time of his or her evaluation. *See id.* at 4.

You contend the submitted information consists of documents evaluating teachers that is confidential under section 21.355 of the Education Code. We understand the teachers at issue were engaged in the process of teaching at the time of the evaluations. However, you do not inform us whether the teachers at issue held teaching certificates or permits under chapter 21 of the Education Code at the time of the evaluations. *See* ORD 643 at 4. Accordingly, we must rule conditionally. To the extent the teachers held teaching certificates or permits under chapter 21 of the Education Code at the time of the evaluation, the district must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code. To the extent the teachers did not hold teaching certificates or permits under chapter 21 of the Education Code at the time of the evaluation, the submitted information is not confidential under section 21.355 of the Education Code and may not be withheld on that basis under section 552.101 of the Government Code. In that event, we address your remaining claim.

Section 552.102 of the Government Code excepts from disclosure “information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.” Gov’t Code § 552.102(a). The Texas Supreme Court held section 552.102(a) excepts from disclosure the dates of birth of state employees in the payroll database of the Texas Comptroller of Public Accounts. *Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex.*, 354 S.W.3d 336 (Tex. 2010). Upon review, we find you have failed to demonstrate the applicability of section 552.102(a) to any of the submitted information, and the district may not withhold any of the submitted information on this basis.

In summary, to the extent the teachers held teaching certificates or permits under chapter 21 of the Education Code at the time of the evaluation, the district must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code. To the extent the teachers did not hold teaching certificates or permits under chapter 21 of the Education Code at the time of the evaluation, the submitted information is not confidential under section 21.355 of the Education Code, may not be withheld on that basis under section 552.101 of the Government Code, and 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](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,



Cindy Nettles  
Assistant Attorney General  
Open Records Division

CN/dls

Ref: ID# 490142

Enc. Submitted documents

c: Requestor  
(w/o enclosures)