



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 26, 2013

Ms. Leticia D. McGowan
School Attorney
Dallas Independent School District
3700 Ross Avenue
Dallas, Texas 75204

OR2013-10911

Dear Ms. McGowan:

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# 491361 (ORR# 11994).

The Dallas Independent School District (the "district") received a request for various information concerning a specified educator, including the educator's appraisals for the last five school years, documents in the educator's personnel file, the educator's current contract, and documents relating to complaints against the educator. You state most of the requested information will be released to the requestor if the requestor proceeds with the request after receipt of the district's itemized cost statement. 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 submitted information.

Section 552.101 of the Government Code excepts from required public disclosure information that is considered confidential by law, including information made confidential by statute. You assert the submitted information includes evaluations of a principal that are made confidential by section 21.355 of the Education Code. Section 21.355(a) provides "[a] document evaluating the performance of a teacher or administrator is confidential." Educ. Code § 21.355(a). This office interprets this statute 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). 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.* A court has concluded a written reprimand constitutes an evaluation for purposes of section 21.355 at it “reflects the [evaluator’s] judgment regarding [a teacher’s] actions, gives corrective direction, and provides for further review. *Abbott v. N. E. Indep. Sch. Dist.*, 212 S.W.3d 364. (Tex. App.—Austin 2006, no pet.).

You assert the submitted information is confidential under section 21.355 because it includes evaluation and reprimand information about another employee who is employed as a district principal. You state when the evaluative information was created, the employee was employed under chapter 21 of the Education Code. You also state the employee “has and was required to hold the appropriate certification under [s]ubchapter B of the Education Code.”

After review of the submitted information and consideration of your arguments, we find the information we have marked consists of documents that evaluate the performance of an administrator for purposes of section 21.355. Consequently, the district must withhold this information from required public disclosure under section 552.101. The remaining submitted information is not covered by section 21.355 and is not excepted from disclosure under section 552.101.

However, portions of the remaining information are confidential under other exceptions in the Act.¹ Section 552.117(a)(1) excepts from disclosure the home address, home telephone number, emergency contact information, social security number, and family member information of a current or former official or employee of a governmental body who requests this information be kept confidential under section 552.024 of the Government Code. Gov’t Code § 552.117(a)(1). Whether a particular piece of information is protected by section 552.117(a)(1) must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Therefore, the 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 on which the request for this information was made. Accordingly, to the extent the individual whose information is at issue timely requested confidentiality under section 552.024, the district must withhold the home address, home telephone numbers, and family member information we have marked under section 552.117(a)(1).

Section 552.137 of the Government Code excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body,” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). Gov’t Code § 552.137(a)-(c).

¹The 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, 480 (1987), 470 (1987).

The e-mail address we have marked is not a type specifically excluded by section 552.137(c) of the Government Code and it does not appear the employee has consented to the release of the e-mail address. Accordingly, the district must withhold the e-mail address we have marked under section 552.137 of the Government Code.

We note two of the submitted documents, which we have marked, appear to 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 protected by copyright. Attorney General Opinion JM-672 (1987). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.* If a member of the public wishes to make copies of materials protected by copyright, 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. *See* Open Records Decision No. 550 (1990).

In summary, the district must withhold the information we marked under sections 552.101 and 552.137. The district must withhold the information we marked under section 552.117(a)(1) to the extent the employee whose information is at issue timely elected confidentiality for the information. The district must release the remaining information, but any copyrighted information 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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Kay Hastings
Assistant Attorney General
Open Records Division

KH/sdk

Ref: ID# 491361

Enc. Submitted documents

c: Requestor
(w/o enclosures)