



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 8, 2013

Ms. Tiffany B. Duncan
Powell & Leon, L.L.P.
115 Wild Basin Road, Suite 106
Austin, Texas 78746

OR2013-13796

Dear Ms. Duncan:

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# 496268.

The Linden-Kildare Consolidated Independent School District (the "district"), which you represent, received a request for an investigation of a specified incident. The district states it is redacting some information pursuant to the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code.¹ The district also states it has provided some of the requested information to the requestor but claims the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the claimed exception and reviewed the submitted information.

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, including 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). Additionally, the court has concluded that a written reprimand constitutes an evaluation for

¹The United States Department of Education Family Policy Compliance Office (the "DOE") has informed this office FERPA 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. The DOE has determined FERPA determinations must be made by the educational authority in possession of the education records. We have posted a copy of the letter from the DOE to this office on the Attorney General's website: <http://www.oag.state.tx.us/open/20060725usdoe.pdf>.

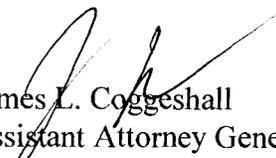
purposes of section 21.355 as it “reflects the principal’s judgment regarding [a teacher’s] actions, gives corrective direction, and provides for further review.” *N. E. Indep. Sch. Dist. v. Abbott*, 212 S.W.3d 364 (Tex. App.—Austin 2006, no pet.). This office has interpreted section 21.355 to apply to any document that evaluates, as that term is commonly understood, the performance of a teacher. *See* Open Records Decision No. 643 at 3 (1996). We also determined a “teacher” for purposes of section 21.355 means a person who (1) 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 (2) is engaged in the process of teaching, as that term is commonly defined, at the time of the evaluation. *See id.* at 4.

You assert the information at issue evaluates the performance of a teacher who holds the appropriate certificates for the purpose of section 21.355. Upon review, we find some of the submitted information is confidential under section 21.355. Therefore, the district must withhold this information, which we have marked, under section 552.101 of the Government Code in conjunction with section 21.355. However, we find you have not established how any of the remaining information, including written responses by the teacher at issue to the complaints made against her and supporting documentation, consists of documents evaluating the performance of a teacher or administrator as contemplated by section 21.355. Accordingly, we conclude you have not established the remaining information is confidential under section 21.355, and the district may not withhold it under section 552.101 on that ground. Thus, the district must release the remaining information to the requestor.

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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/tch

Ref: ID# 496268

Enc. Submitted documents

c: Requestor
(w/o enclosures)