



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 20, 2014

Ms. Melody K. Smith
Counsel for Cedar Hill Independent School District
Strasburger & Price, LLP
901 Main Street, Suite 4400
Dallas, Texas 75202-3794

OR2014-03182

Dear Ms. Smith:

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# 514666.

The Cedar Hill Independent School District (the "district"), which you represent, received a request for all e-mails from a named employee during a specified period of time, all non-school related electronic data of the named employee, and all internet history, favorites, and bookmarks from the named employee's issued computer. You state the district will release some of the requested information. You indicate the district has redacted some information pursuant to the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code.¹ You argue a portion of the submitted information is not subject to the Act. Additionally, and in the alternative, you claim portions of the submitted information are excepted from disclosure under sections 552.101 and 552.136 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. You also state release of the submitted information may

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>

implicate the interests of the named employee. Accordingly, you notified this individual of the request for information and of his right to submit arguments stating why his information should not be released. *See* Gov't Code § 552.304 (providing interested party may submit comments stating why information should or should not be released).

You contend most of the submitted information is not subject to the Act. The Act is applicable only to "public information." *See id.* §§ 552.002, .021. Section 552.002(a) defines "public information" as information that is written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

- (1) by a governmental body;
- (2) for a governmental body and the governmental body:
 - (A) owns the information;
 - (B) has a right of access to the information; or
 - (C) spends or contributes public money for the purpose of writing, producing, collecting, assembling, or maintaining the information; or
- (3) by an individual officer or employee of a governmental body in the officer's or employee's official capacity and the information pertains to official business of the governmental body.

Id. § 552.002. Thus, virtually all the information in a governmental body's physical possession constitutes public information and is subject to the Act. *See id.* § 552.002(a)(1); *see also* Open Records Decision Nos. 549 at 4 (1990), 514 at 1-2 (1988). The Act also encompasses information a governmental body does not physically possess, if the information is collected, assembled, or maintained for the governmental body and the governmental body owns the information or has a right of access to it. Gov't Code § 552.002(a)(2); *see* Open Records Decision No. 462 at 4 (1987). You inform us the information you have indicated is of a purely personal nature and unrelated to the business of the district. Based on your representations and our review, we agree most of the information you have indicated does not constitute "information that is written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business" by or for the district. *See* Gov't Code § 552.002. Therefore, we conclude the information you have indicated is generally not subject to the Act and need not be released in response to the present request for information. However, we find one of the e-mail strings at issue, which we have marked, was written, produced, assembled, or maintained in connection with the transaction of official business by employees of the district

in their official capacities. Thus, this e-mail string is subject to the Act. Accordingly, we will address your remaining argument against its disclosure.

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. Section 552.101 of the Government Code encompasses 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.” Educ. Code § 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. 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 information you have marked evaluates the performance of a certified teacher. We understand the teacher concerned was acting in that capacity when the evaluative documents were created. You state the teacher held a valid certification at the time of the evaluations. Based on your representations and our review, we conclude the district must withhold the information it has marked, along with the information we have marked, under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code.

Section 552.136 of the Government Code provides, “[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” Gov’t Code § 552.136(b). An access device number is one that may be used to 1) obtain money, goods, services, or another thing of value, or 2) initiate a transfer of funds other than a transfer originated solely by a paper instrument, and includes an account number. *See id.* § 552.136(a) (defining “access device”). Upon review, we find the none of the remaining information is subject to section 552.136 of the Government Code and may not be withheld on that basis.

In summary, with the exception of the e-mail string we have marked, the information you have indicated is generally not subject to the Act and need not be released in response to the present request for information. The district must withhold the information it has marked, along with the information we have marked, under section 552.101 of the Government Code

in conjunction with section 21.355 of the Education Code. The district must release the remaining information.

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,



Megan G. Holloway
Assistant Attorney General
Open Records Division

MGH/akg

Ref: ID#514666

Enc. Submitted documents

c: Requestor
(w/o enclosures)