



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 26, 2014

Mr. S. Anthony Safi
Counsel for Fabens Independent School District
Mounce, Green, Myers, Safi, Paxson & Galatzan, P.C.
P.O. Box 1977
El Paso, Texas 79999-1977

OR2014-04999

Dear Mr. Safi:

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# 518035.

The Fabens Independent School District (the "district"), which you represent, received a request for the personnel file of a named district employee, minutes from Board of Trustees (the "board") meetings for a specified time period, and the board's campaign finance reports for specified campaigns of the named employee. You state the district will release some information to the requestor. The district claims portions of the submitted information are excepted from disclosure under sections 552.101 and 552.102 of the Government Code. Further, you state release of the submitted information may implicate the privacy interests of a third party. Accordingly, you state, and provide documentation showing, you notified the third party of the request for information and of his right to submit arguments to this office as to why the information at issue should not be released. *See* Gov't Code § 552.304 (interested party may submit written comments regarding availability of requested information). As of the date of this letter, we have not received comments from the third party explaining why the submitted information should not be released. We have considered the exceptions you claim 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." *Id.* § 552.101. Section 552.101 encompasses information protected by other statutes, such as

section 21.355 of the Education Code. Section 21.355 provides, in relevant part, “[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 administrator. *See* Open Records Decision No. 643 (1996). In Open Records Decision No. 643, we determined 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 and who is in the process of teaching, as that term is commonly defined, at the time of the evaluation. *See id.* at 4.

We understand the individual whose information is at issue was employed by the district as a teacher when his performance was evaluated. You indicate the teacher at issue holds a valid certification. However, you do not inform us the teacher at issue held the requisite certificate under chapter 21 of the Education Code at the time of the evaluations. *See id.* Accordingly, we must rule conditionally. If the teacher at issue held the requisite certificate under chapter 21 of the Education Code at the time of the evaluations, the district must withhold the evaluations we marked under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code. If the teacher whose information is at issue did not hold the requisite certificate under chapter 21 of the Education Code at the time of the evaluations, the information we marked relating to the teacher 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. Further, we find you have failed to demonstrate how the remaining information consists of documents evaluating the performance of a teacher or administrator for purposes of section 21.355 of the Education Code. Accordingly, none of the remaining information may be withheld under section 552.101 of the Government Code on that basis.

Section 552.102(b) of the Government Code excepts from public disclosure “a transcript from an institution of higher education maintained in the personnel file of a professional public school employee[.]” Gov’t Code § 552.102(b). However, this exception further provides, “the degree obtained or the curriculum on a transcript in the personnel file of the employee” are not excepted from disclosure. *Id.*; *see also* Open Records Decision No. 526 (1989) (addressing statutory predecessor). Upon review, we find the information at issue is within a memorandum and does not consist of a higher education transcript of a professional public school employee. Therefore, the district may not withhold this information under section 552.102(b) of the Government Code.

In summary, if the teacher at issue held the requisite certificate under chapter 21 of the Education Code at the time of the evaluations, the district must withhold the evaluations we 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,

A handwritten signature in cursive script, appearing to read "Paige Thompson".

Paige Thompson
Assistant Attorney General
Open Records Division

PT/dls

Ref: ID# 518035

Enc. Submitted documents

c: Requestor
(w/o enclosures)

