



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 9, 2014

Mr. David B. Hodgins
Counsel for Brazosport Independent School District
Thompson & Horton, LLP
3200 Southwest Freeway, Suite 2000
Houston, Texas 77027-7528

OR2014-07930

Dear Mr. Hodgins:

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# 522240.

The Brazosport Independent School District (the "district"), which you represent, received a request for the investigation and findings of disciplinary action resulting from a specified grievance against a named district employee. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.103 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the submitted information consists of a completed evaluation and a completed investigation subject to section 552.022 of the Government Code. Section 552.022(a)(1) provides for the required public disclosure of "a completed report, audit, evaluation, or investigation made of, for, or by a governmental body," unless it is excepted by section 552.108 of the Government Code or made confidential under the Act or other law. Gov't Code § 552.022(a)(1). We note you do not raise section 552.108. Thus, the district may withhold the submitted information only to the extent it is made confidential under the Act or other law. You raise section 552.103 of the Government Code for this information. However, section 552.103 is a discretionary exception and does not make information confidential under the Act. See *Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary

exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions). Accordingly, the district may not withhold the submitted information on the basis of section 552.103. However, because section 552.101 of the Government Code can make information confidential for purposes of 552.022(a)(1), we will address the applicability of that exception to the submitted information.

Section 552.101 of the Government Code excepts “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. Section 552.101 encompasses section 21.355 of the Education Code, which 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). Additionally, a court has concluded that a written reprimand constitutes an evaluation for 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.” *North East Indep. Sch. Dist. v. Abbott*, 212 S.W.3d 364 (Tex. App.—Austin 2006, no pet.). In Open Records Decision No. 643, we concluded that a “teacher” for purposes of section 21.355 means a person who (1) is required to and does in fact hold a certificate or permit required under chapter 21 of the Education Code and (2) is teaching at the time of his or her evaluation. *See* ORD 643.

Upon review, we find a portion of the submitted information consists of an evaluation of a teacher as she was engaged in the process of teaching. Further, you indicate the employee whose information is at issue held a teacher’s certificate under chapter 21 of the Education Code at the time of the evaluations. Accordingly, the district must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code. However, we find none of the remaining information constitutes an evaluation of an individual’s performance as a teacher for the purposes of section 21.355. Accordingly, we find you have failed to demonstrate the remaining information constitutes a teacher evaluation subject to section 21.355 of the Education Code, and it may not be withheld under section 552.101 of the Government Code on that basis. As you raise no other exceptions to disclosure, the remaining information 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.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 black ink that reads "Megan G. Holloway". The signature is written in a cursive style with a large, looping initial "M".

Megan G. Holloway
Assistant Attorney General
Open Records Division

MGH/akg

Ref: ID# 522240

Enc. Submitted documents

c: Requestor
(w/o enclosures)