



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 21, 2014

Ms. Cynthia Rincón
General Counsel
Fort Bend Independent School District
16431 Lexington Boulevard
Sugar Land, Texas 77479

OR2014-21262

Dear Ms. Rincón:

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# 543990 (ORR 2014-15-209).

The Fort Bend Independent School District (the "district") received a request for copies of the employee, parent, and student surveys of Clements High School for the 2013-2014 school year. You claim portions of the submitted information are 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 disclosure "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, "[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 at 3 (1996). We have determined a "teacher" for purposes of section 21.355 means a person who is required to and does in fact hold a certificate or permit under chapter 21 of the Education Code and is teaching at the time of the evaluation. *See* ORD 643 at 4. We have also determined "administrator," for purposes of section 21.355, means a person who is required to and does

in fact hold an administrator's certificate under subchapter B of chapter 21 of the Education Code and is performing the function of an administrator, as that term is commonly defined, at the time of the evaluation. *Id.* Additionally, the Third Court of Appeals has concluded 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." *Abbot v. North East Indep. Sch. Dist.*, 212 S.W.3d 364 (Tex. App.—Austin 2006, no pet.). You state the information at issue consists of evaluations. Upon review, however, we find you have failed to demonstrate how the survey responses you marked 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 information at issue may be withheld under section 552.101 of the Government Code on that basis.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *Indus. Found. V. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* At 683. However, we note the public generally has a legitimate interest in information that relates to public employment and public employees. *See* Open Records Decisions Nos. 562 at 10 (1990) (personnel file information does not involve most intimate aspects of human affairs, but in fact touches on matters of legitimate public concern), 542 (1990), 470 at 4 (1987) (public has legitimate interest in job qualifications and performance of public employees), 444 at 5-6 (1986) (public has legitimate interest in knowing reasons for dismissal, demotion, promotion, or resignation of public employees), 423 at 2 (1984) (scope of public employee privacy is narrow). We note some information you seek to withhold has been deidentified. Further, we find you have failed to demonstrate the remaining information at issue is highly intimate or embarrassing and of no legitimate public interest. Accordingly, the district may not withhold any portion of the information at issue under section 552.101 of the Government Code on the basis of common-law privacy. As no other exceptions to disclosure are raised, the district must release the submitted 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,



Lauren Dahlstein
Assistant Attorney General
Open Records Division

LMD/som

Ref: ID# 543990

Enc. Submitted documents

c: Requestor
(w/o enclosures)