



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 26, 2014

Mr. Orlando "Jay" Juarez, Jr.
For the Mathis Independent School District
J. Cruz & Associates, LLC
216 West Village Boulevard, Suite 202
Laredo, Texas 78041

OR2014-21519

Dear Mr. Juarez:

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# 545054.

The Mathis Independent School District (the "district"), which you represent, received a request for the personnel files for, evaluations of, complaints against, and e-mails concerning a named individual sent by or to a named individual, as well as a copy of the job description for each position held by the named individual while she was employed by the district. The district received a second request for all communications between the district and Hempstead Independent School District concerning the named individual, a copy of all documents produced to Hempstead Independent School District concerning the named individual, all requests under the Act seeking documents regarding the named individual, and all evaluations for the 2009-2010 school year for individuals holding the following positions: business manager, interim business manager, area administrator for college readiness, athletic director, band director, and Brush Country Co-op director. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note you have only submitted evaluations to this office. You have not submitted information responsive to the remaining categories of the requests. We assume, to the extent any information responsive to the remaining categories of information existed on the date the district received the request, the district has released it. If the district has not released any

such information, it must do so at this time. *See* Gov't Code §§ 552.006, .301, .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes no exceptions apply to requested information, it must release information as soon as possible).

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 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. We also have determined that "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 functions of an administrator, as that term is commonly defined, at the time of the evaluation. *Id.*

You contend the submitted information consists of evaluations that are confidential under section 21.355 of the Education Code. You state, and provide documentation showing, the individuals at issue held certificates at the time of the evaluations. Upon review, we find the information we marked consists of an evaluation for section 21.355 purposes. Accordingly, we conclude 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, the remaining information consists of an evaluation of an individual as the Band Director. We find you have not demonstrated how the remaining information constitutes the evaluation of the performance of a teacher for section 21.355 purposes. *See* Educ. Code § 21.353 (teachers shall be appraised only on basis of classroom teaching performance and not in connection with extracurricular activities). Accordingly, the district may not withhold any remaining information under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code. As you raise no other argument against disclosure of the remaining information, it 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, appearing to be 'D. Olds', written over a horizontal line.

Daniel Olds
Assistant Attorney General
Open Records Division

DO/sdk

Ref: ID# 545054

Enc. Submitted documents

c: Requestor
(w/o enclosures)