



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 30, 2015

Ms. Haley Turner
Counsel for the Sweeny Independent School District
Walsh Gallegos Trevino Russo & Kyle, P.C.
P.O. Box 2156
Austin, Texas 78768

OR2015-27295

Dear Ms. Turner:

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# 598176.

The Sweeny Independent School District (the "district"), which you represent, received a request for information pertaining to nine named district employees and specified expenditure reports.¹ We understand the district has released some of the requested information. 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 representative sample of information.²

¹You state the district received clarification of the information requested. *See* Gov't Code § 552.222(b) (providing if request for information is unclear, governmental body may ask requestor to clarify request); *see also City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

²We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

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 that “[a] document evaluating the performance of a teacher or administrator is confidential.” Educ. Code § 21.355. In addition, the court 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.” *Abbott v. North East Indep. Sch. Dist.*, 212 S.W.3d 364 (Tex. App.—Austin 2006, no pet.). This office has interpreted this section to apply to any document that evaluates, as that term is commonly understood, the performance of a teacher or administrator. Open Records Decision No. 643 (1996). In that opinion, we concluded that a teacher is someone who is required to hold and does hold a certificate or permit required under chapter 21 of the Education Code and is teaching at the time of his or her evaluation. *Id.* We also have determined that for purposes of section 21.355, “administrator” 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 claim the submitted information constitutes evaluations of a teacher that are confidential under section 21.355 of the Education Code. You state the individuals at issue held the appropriate certificates at the time of the evaluations. Based on your representations and our review, we conclude that with the exception of the information we have marked to release, the district must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code. However, the remaining information pertains to one of the employees at issue in his capacity as a coach. Upon review, we find you have failed to demonstrate any of the remaining information constitutes an evaluation of the performance of a teacher or an administrator for the purposes of section 21.355 of the Education Code. *See* Educ. Code § 21.353 (teachers shall be appraised only on basis of classroom teaching performance and not in connection with extracurricular activities). Therefore, the district may not withhold the remaining information under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code. As you raise no further exception to disclosure, 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 black ink, appearing to read "N. A. Ybarra".

Nicholas A. Ybarra
Assistant Attorney General
Open Records Division

NAY/bhf

Ref: ID# 598176

Enc. Submitted documents

c: Requestor
(w/o enclosures)