



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 14, 2016

Ms. Ramona Soto
Attorney
Fort Worth Independent School District
100 North University Drive Southwest, Suite 172
Fort Worth, Texas 76107

OR2016-08392

Dear Ms. Soto:

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# 605701.

The Fort Worth Independent School District (the "district") received a request for information pertaining to a named employee. The district states it is redacting some information pursuant to the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code.¹ The district also states it providing some of the requested information to the requestor, but claims the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the claimed exception and reviewed the submitted information.²

¹The United States Department of Education Family Policy Compliance Office (the "DOE") has informed this office FERPA does not permit state and local educational authorities to disclose to this office, without parental consent, unredacted, personally identifiable information contained in education records for the purpose of our review in the open records ruling process under the Act. The DOE has determined FERPA determinations must be made by the educational authority in possession of the education records. We have posted a copy of the letter from the DOE to this office on the Attorney General's website: <https://www.texasattorneygeneral.gov/files/og/20060725usdoe.pdf>.

²We note the district did not comply with the requirements of section 552.301 of the Government Code. *See* Gov't Code § 552.301(e). Nevertheless, section 552.101 of the Government Code is a mandatory exception that can provide a compelling reason to overcome the presumption of openness caused by a failure to comply with section 552.301. *See id.* §§ 552.007, .302. Thus, we will consider the claim of the district under that section.

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. This section encompasses section 21.355 of the Education Code. Section 21.355(a) provides “[a] document evaluating the performance of a teacher or administrator is confidential.” Educ. Code § 21.355(a). Additionally, the Third Court of Appeals 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.” *Abbott v. N. E. Indep. Sch. Dist.*, 212 S.W.3d 364 (Tex. App.—Austin 2006, no pet.). 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. *See* Open Records Decision No. 643 at 3 (1996). We also determined a “teacher” for purposes of section 21.355 means a person who (1) 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 (2) is engaged in the process of teaching, as that term is commonly defined, at the time of the evaluation. *See id.* at 4.

The district asserts the information at issue evaluates the performance of a teacher, who we understand held the appropriate certification at the time the evaluations were prepared. Upon review, we find the submitted information is confidential under section 21.355(a). Therefore, the district must withhold the submitted under section 552.101 of the Government Code in conjunction with section 21.355(a) of the Education Code.

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,



Michael A. Pearle
Assistant Attorney General
Open Records Division

MAP/eb

Ref: ID# 605701

Enc. Submitted documents

c: Requestor
(w/o enclosures)