



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 2, 2016

Mr. Thomas A. Dyar
Legal Counsel
Grand Prairie Independent School district
2602 South Belt Line Road
Grand Prairie, Texas 75052

OR2016-19885

Dear Mr. Dyar:

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# 625132.

The Grand Prairie Independent School District (the "district") received a request for all separation agreements with a named employee as well as all reports pertaining to the named employee's conduct. We note the district redacted information pursuant to the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232g(a).¹ You state the district has released some 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 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." *Id.* § 552.101. This section encompasses information other statutes make confidential, such

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 or an adult student's 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 educational records. We have posted a copy of the letter from the DOE on the Attorney General's website at <https://www.texasattorneygeneral.gov/files/og/20060725usdoe.pdf>.

as 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 Open Records Letter No. 643, this office interpreted section 21.355 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 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.* In addition, the Third Court of Appeals has held 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.).

You explain the named employee was a district teacher and you state the submitted information consists of investigatory and evaluative documents maintained by the district that pertain to the named employee while he was a district teacher. You also state, and provide documentation demonstrating, the named employee held the appropriate teacher certification under subchapter B of the Education Code at the time the submitted information was created. Based on your representations and our review, we find the district must withhold Tab 4 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 consists of teacher evaluations for the purposes of section 21.355 of the Education Code. Accordingly, the district may not withhold any of the remaining information under section 552.101 of the Government Code on the basis of section 21.355.

Section 552.117(a)(1) of the Government Code excepts from disclosure the home addresses and telephone numbers, social security numbers, emergency contact information, and family member information of current or former officials or employees of a governmental body who request this information be kept confidential under section 552.024 of the Government Code, except as provided by section 552.024(a-1).² See Gov’t Code §§ 552.117(a)(1), .024. Section 552.024(a-1) of the Government Code provides, “A school district may not require an employee or former employee of the district to choose whether to allow public access to the employee’s or former employee’s social security number.” *Id.* § 552.024(a-1). Thus, the district may only withhold under section 552.117 the home address and telephone number, emergency contact information, and family member information of a current or former employee or official of the district who requests this information be kept confidential under section 552.024. Whether a particular piece of information is protected by section 552.117(a)(1) must be determined at the time the request for it is made. See Open Records Decision No. 530 at 5 (1989). Thus, information may only be withheld under section 552.117(a)(1) on behalf of a current or former employee who made a request

²The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body but ordinarily will not raise other exceptions. See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

for confidentiality under section 552.024 prior to the date of the governmental body's receipt of the request for the information. We have marked the address of the named employee. If the named employee timely elected to keep his information confidential pursuant to section 552.024, the district must withhold the information we have marked under section 552.117(a)(1). The district may not withhold this information under section 552.117(a)(1) if the employee did not timely elect to keep his information confidential pursuant to section 552.024.

In summary, the district must withhold Tab 4 under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code. If the named employee timely elected to keep his information confidential pursuant to section 552.024 of the Government Code, the district must withhold the information we have marked under section 552.117(a)(1) of the Government Code. 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,



Ramsey A. Abarca
Assistant Attorney General
Open Records Division

RAA/dls

Ref: ID# 625132

Enc. Submitted documents

c: Requestor
(w/o enclosures)