



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 2, 2016

Mr. Douglas R. Brock
Counsel for the Magnolia Independent School District
Walsh Gallegos Treviño Russo & Kyle, P.C.
P.O. Box 2156
Austin, Texas 78768

OR2016-19905

Dear Mr. Brock:

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# 625416.

The Magnolia Independent School District (the "district"), which you represent, received a request for information pertaining to a named individual.¹ You state you have released some information to the requestor. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.102 of the Government Code. We have considered the exceptions 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. This section encompasses information protected by other statutes. Section 21.355 of the Education Code provides, in relevant part, "[a] document evaluating the performance of a teacher or administrator is confidential." Educ. Code § 21.355(a). The Third Court of Appeals has concluded a written reprimand constitutes an evaluation for purposes of section 21.355 because "it reflects the principal's judgment regarding [a

¹You state the district received clarification from the requestor. *See* Gov't Code § 552.222(b) (stating if information requested is unclear to governmental body or if large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used).

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 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 (1996). In Open Records Decision No. 643, we determined for purposes of section 21.355, the word “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 and who is in the process of teaching, as that term is commonly defined, at the time of the evaluation. *See id.* at 4.

You contend Tab 2 consists of confidential evaluations of a district teacher. You state, and provide documentation demonstrating, the teacher whose information is at issue in Tab 2 held the appropriate certificate at the time of the creation of the evaluations and was acting as a teacher at the time the evaluations were prepared. Upon review, we agree some of the information in Tab 2, which we have marked, consists of confidential evaluations for the purposes of section 21.355 of the Education Code. Accordingly, 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, we find the district has failed to demonstrate the remaining information at issue consists of documents evaluating the performance of an educator for purposes of section 21.355. Consequently, we find none of the remaining information at issue may be withheld under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code.

Section 552.102(b) of the Government Code excepts from public disclosure “a transcript from an institution of higher education maintained in the personnel file of a professional public school employee[.]” Gov’t Code § 552.102(b). This exception further provides, however, that “the degree obtained or the curriculum on a transcript in the personnel file of the employee” are not excepted from disclosure. *Id.*; *see also* Open Records Decision No. 526 (1989). Thus, with the exception of the employee’s name, courses taken, and degrees obtained, the district must withhold Tab 4 pursuant to section 552.102(b) of the Government Code.

In summary, 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. With the exception of the employee’s name, courses taken, and degrees obtained, the district must withhold Tab 4 pursuant to section 552.102(b) 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,

A handwritten signature in black ink, appearing to read 'Cristian Rosas-Grillet', with a long horizontal flourish extending to the right.

Cristian Rosas-Grillet
Assistant Attorney General
Open Records Division

CRG/bw

Ref: ID# 625416

Enc. Submitted documents

c: Requestor
(w/o enclosures)