



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 27, 2016

Mr. Osman Balaman
Legal Coordinator
Harmony Public Schools
9321 West Sam Houston Parkway South
Houston, Texas 77099

OR2016-16883

Dear Mr. Balaman:

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# 620381.

Harmony Public Schools (the "school") received a request for information pertaining to the STAAR and TEKS tests, the requestor's child, and specified information pertaining to teachers during a specified school year. You state you have released some information to the requestor. You state the school is withholding some information pursuant to the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232g.¹ 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." Gov't Code § 552.101. Section 552.101 encompasses section 21.355 of the Education Code, which provides in part:

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>.

(a) A document evaluating the performance of a teacher or administrator is confidential.

(b) Subsection (a) applies to a teacher or administrator employed by an open-enrollment charter school regardless of whether the teacher or administrator is certified under Subchapter B.

Educ. Code § 21.355(a), (b). 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). 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 teacher’s] actions, gives corrective direction, and provides for further review.” *See Abbott v. North East Indep. Sch. Dist.*, 212 S.W.3d 364 (Tex. App.—Austin 2006, no pet.).

You assert the submitted information consists of a confidential evaluation of a teacher at the school, which is a Texas open-enrollment charter school. Upon review, we find the submitted information consists of a document that evaluates the performance of a teacher for purposes of section 21.355. Accordingly, the submitted information is confidential under section 21.355 and must be withheld under section 552.101 of the Government Code. *See* ORD 643 at 4.

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,



Ashley Crutchfield
Assistant Attorney General
Open Records Division

AC/dls

Ref: ID# 620381

Enc. Submitted documents

c: Requestor
(w/o enclosures)