



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 17, 2016

Mr. Robb D. Decker
Counsel for Northside Independent School District
Walsh, Gallegos, Treviño, Russo & Kyle, P.C.
P.O. Box 460606
San Antonio, Texas 78246

OR2016-18631

Dear Mr. Decker:

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# 623252.

The Northside Independent School District (the "district"), which you represent, received a request for information pertaining to a named educator from an investigator with the Texas Education Agency ("TEA"). The district also 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 You state the district will release 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 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."

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>.

Gov't Code § 552.101. This section encompasses information other statutes make confidential, such 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 Decision 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 seek to withhold AG-0001 through AG-0006 under section 21.355. You state the named individual held a teacher’s certificate under chapter 21 of the Education Code and was performing the functions of a teacher at the time of the evaluations. However, we note the information at issue pertains to the named individual’s duties as a coach. Thus, we find the district has failed to demonstrate the information at issue evaluates the performance of a teacher for purposes of section 21.355. *See* Educ. Code § 21.353 (teachers shall be appraised only on basis of classroom teaching performance and not in connection with extracurricular activities). Accordingly, AG-0001 through AG-0006 are not subject to section 21.355 and may not be withheld under 552.101 of the Government Code on that basis.

Section 552.101 also encompasses section 261.201 of the Family Code. Section 261.201(a) of the Family Code provides as follows:

(a) [T]he following information is confidential, is not subject to public release under [the Act] and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

- (1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and
- (2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201(a); *see id.* §§ 101.003 (defining child for purposes of Family Code title 5), 261.001(1) (defining “abuse” for purposes of Fam. Code ch. 261). We note the district is not an agency authorized to conduct a chapter 261 investigation. *See id.* § 261.103

(listing agencies that may conduct child abuse investigations). The district contends AG-0007 is confidential under section 261.201. Fam. Code § 261.201(a). However, we find the district has failed to demonstrate the submitted information involves a report of alleged or suspected child abuse or neglect; nor does the information reveal the identity of an individual who made a report of suspected abuse or neglect of a child for the purposes of section 261.201(a)(1). Furthermore, we find you have failed to establish the information was used or developed in an investigation of alleged or suspected child abuse or neglect under section 261.201(a)(2). Therefore, the district may not withhold the submitted information under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. As the district raises no other exceptions, it must release the submitted 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,



Kelly McWethy
Assistant Attorney General
Open Records Division

KSM/dls

Ref: ID# 623252

Enc. Submitted documents

c: Requestor
(w/o enclosures)