



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 20, 2016

Mr. Justin Graham
General Counsel
Garland Independent School District
P.O. Box 469026
Garland, Texas 75046-4923

OR2016-28087

Dear Mr. Graham:

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# 638803.

The Garland Independent School District (the "district") received a request for the personnel file of a former employee of the district, including four specified categories of information. You state the district has released some information to the requestor. You state the district will withhold or redact information pursuant to the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code.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 "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses other statutes, 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(a). This office has interpreted section 21.355 to apply

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>.

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). Additionally, a court 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. North East Indep. Sch. Dist.*, 212 S.W.3d 364 (Tex. App.—Austin 2006, no pet.). In Open Records Decision No. 643, we concluded that a “teacher” for purposes of section 21.355 means a person who (1) is required to and does in fact hold a certificate or permit required under chapter 21 of the Education Code and (2) is teaching at the time of his or her evaluation. *See* ORD 643.

You assert the submitted information consists of written evaluations of a teacher that are confidential under section 21.355. You inform us the teacher at issue held a provisional teaching certificate under chapter 21 of the Education Code at the time of the evaluations. However, we note section 21.355 does not apply to evaluations of teacher interns. *See* ORD 643 at 5 (concluding teacher interns, trainees, and educational aides are not “teachers” for the purposes of section 21.355). Thus, the individual at issue did not hold the appropriate teaching certificate under chapter 21 of the Education Code at the time of the evaluations at issue for the purposes of section 21.355 of the Education Code. Based on your representations and our review, we find the district failed to demonstrate the submitted information consists of evaluative documents as contemplated by section 21.355. Thus, the submitted information may not be withheld under section 552.101 of the Government Code on that basis. Accordingly, the district 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,



Kieran Hillis
Assistant Attorney General
Open Records Division

KH/akg

Ref: ID# 638803

Enc. Submitted documents

c: Requestor
(w/o enclosures)