



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 21, 2016

Ms. Ylise Janssen
General Counsel
Austin Independent School District
1111 West Sixth Street, Suite A240
Austin, Texas 78703

OR2016-28164

Dear Ms. Janssen:

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# 638844

The Austin Independent School District (the "district") received a request for the personnel file of a named employee during a specified time period. 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. This section encompasses section 21.355 of the Education Code, which provides, "[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 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). We have determined that for purposes of section 21.355, "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 or a school district teaching permit under section 21.055 and who is engaged in the process of teaching, as that term is commonly defined, at the time of the evaluation. *See id.* at 4. We also have determined that "administrator," for purposes of section 21.355, means a person who is required to and does in fact hold an administrator's certificate under subchapter B of chapter 21 of the Education Code and is performing the functions of an administrator, as that term is commonly defined, at the time of the evaluation. *Id.* 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 North East Indep. Sch. Dist. v. Abbott*, 212 S.W.3d 364 (Tex. App.—Austin 2006, no pet.). We further determined that “teacher interns, teacher trainees, librarians, educational aids and counselors cannot be teachers or administrators for purposes of section 21.355.” *See Open Records Decision No. 684 at 5 (2009)*.

You assert the submitted information consists of written evaluations that are confidential under section 21.355 of the Education Code. You state, and provide documentation showing, the individual at issue held certificates at the time of the evaluations. Upon review, we find the information we marked consists of evaluations of a teacher for section 21.355 purposes. Accordingly, we conclude 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 note the remaining information pertains to the employee’s performance as a counselor. Thus, we find you have not shown the information at issue evaluates the performance of a teacher or administrator for the purposes of section 21.355. Therefore, the district may not withhold the remaining information under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code. As you raise no further exceptions to disclosure of this information, the remaining information must be released.

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,



Sidney M. Pounds
Assistant Attorney General
Open Records Division

SMP/akg

Ref: ID# 638844

Enc. Submitted documents

c: Requestor
(w/o enclosures)