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ATTORNEY GENERAL OF TEXAS

December 27, 2016

Mr. Stephen Trautmann, Jr.
Counsel for the San Marcos Consolidated Independent School District
J. Cruz & Associates, LLC
216 West Village Boulevard, Suite 202
Laredo, Texas 78041

OR2016-28408

Dear Mr. Trautmann:

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# 639393.

The San Marcos Consolidated Independent School District (the "district"), which you represent, received three requests for information pertaining to the resignation of a named former employee and the former employee's personnel file. You claim the requested 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.

Initially, we note you have only submitted two performance evaluations and a letter for our review. Thus, to the extent any additional responsive information existed when the present request was received, we assume it has been released. If such information has not been released, then it must be released at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

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 information made confidential under other statutes, such as section 21.355 of the Education Code, which provides, in relevant part, "[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 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

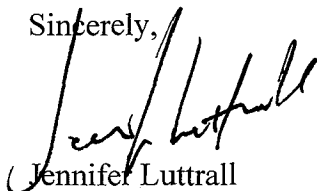
direction, and provides for further review.” *Abbott v. North East Indep. Sch. Dist.*, 212 S.W.3d 364 (Tex. App.—Austin 2006, no pet.). In Open Records Decision No. 643, we determined for purposes of section 21.355, the word “teacher” means a person who is required to and does in fact hold a teaching 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* ORD 643 at 4. Further, in Open Records Decision No. 643, we determined an “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 as an administrator, as that term is commonly defined, at the time of the evaluation. *Id.*

The district contends the submitted information consists of confidential evaluations of an administrator by the district. We understand the administrator was performing the functions of an administrator at the time of the evaluations. However, the district does not inform us the administrator was certified as an administrator under chapter 21 of the Education Code at the time of the evaluations. *See* ORD 643 at 4. Accordingly, we must rule conditionally. To the extent the administrator at issue was certified under chapter 21 of the Education Code, the district must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code. To the extent the administrator was not certified under chapter 21 of the Education Code, the submitted information is not confidential under section 21.355 of the Education Code and may not be withheld on that basis under section 552.101 of the Government Code. In that instance, the submitted 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,



Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/eb

Ref: ID#639393

Enc. Submitted documents

c: 3 Requestors
(w/o enclosures)