



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 6, 2017

Mr. Jaime Garcia
Counsel for United Independent School District
J. Cruz & Associates, LLC
216 West Village Boulevard, Suite 202
Laredo, Texas 78041

OR2017-00471

Dear Mr. Garcia:

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# 640630.

The United Independent School District (the "district"), which you represent, received a request for the employee record of a named teacher. The district states it has released some of the requested information. The district states it has redacted some information pursuant to the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code.¹ The district claims 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

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>.

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). 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.

The district asserts Exhibit B consists of written evaluations that are confidential under section 21.355. The district informs us the teacher at issue held the appropriate certification and was acting as a teacher at the time of the evaluations. Based on your representations and our review, we agree the documents we have marked constitute evaluations as contemplated by section 21.355. Accordingly, the district must withhold these documents under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code. However, we find you have failed to demonstrate any of the remaining information constitutes an evaluation for the purposes of section 21.355 of the Education Code. 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 no other exceptions to disclosure have been raised, 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,



Kaelan A. Henze
Assistant Attorney General
Open Records Division

KAH/eb

Ref: ID# 640630

Enc. Submitted documents

c: Requestor
(w/o enclosures)