



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 30, 2017

Mr. Matthew M. Coleman
Counsel for Mission Consolidated Independent School District
Eichelbaum Wardell Hansen Powell & Mehl, P.C.
4201 West Palmer Lane, Suite A-100
Austin, Texas 78727

OR2017-02035

Dear Mr. Coleman:

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# 643407.

The Mission Consolidated Independent School District (the "district"), which you represent, received a request for information pertaining to the suspension of a named individual. You state you will release some information. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code.¹ We have considered the exception you claim and reviewed the submitted information.

Initially, we note the United States Department of Education Family Policy Compliance Office has informed this office the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code, does not permit state and local educational authorities to disclose to this office, without parental or an adult student's consent, unredacted, personally identifiable information contained in education records for

¹You note the district failed to comply with section 552.301 of the Government Code in requesting a ruling; however, section 552.101 of the Government Code is a mandatory exception that makes information confidential, it constitutes a compelling reason to withhold information sufficient to overcome the presumption of openness caused by a failure to comply with section 552.301. *See* Gov't Code §§ 552.007, .301, .302, .352. Accordingly, we will consider the district's argument under section 552.101.

the purpose of our review in the open records ruling process under the Act.² Consequently, state and local educational authorities that receive a request for education records from a member of the public under the Act must not submit education records to this office in unredacted form, that is, in a form in which “personally identifiable information” is disclosed. *See* 34 C.F.R. § 99.3 (defining “personally identifiable information”). You have submitted unredacted education records for our review. Because our office is prohibited from reviewing these education records to determine whether appropriate redactions under FERPA have been made, we will not address the applicability of FERPA to any of the submitted records. *See* 20 U.S.C. § 1232g(a)(1)(A). Such determinations under FERPA must be made by the educational authority in possession of the education records. However, we will consider your argument against disclosure of the submitted information.

Section 552.101 of the Government Code exempts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. Section 552.101 of the Government Code encompasses 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 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 claim the submitted information constitutes evaluations of a teacher that is confidential under section 21.355 of the Education Code. You state the individual at issue held the appropriate certificate at the time of the evaluation. However, upon review, we find the submitted information pertains to the employee at issue in her capacity as a coach. Thus, we find you have failed to demonstrate any of the submitted information constitutes an evaluation of the performance of a teacher for the purposes of section 21.355 of the Education Code. *See* Educ. Code § 21.353 (teachers shall be appraised only on basis of classroom teaching performance and not in connection with extracurricular activities). Therefore, the district may not withhold the submitted information under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code. The district must release the submitted information.

²A copy of this letter may be found on the Office of the Attorney General’s website at <https://www.texasattorneygeneral.gov/files/og/20060725usdoe.pdf>.

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,



Paige Lay
Assistant Attorney General
Open Records Division

PL/som

Ref: ID# 643407

Enc. Submitted documents

c: Requestor
(w/o enclosures)