



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 6, 2017

Ms. Amanda K. Davis
Associate General Counsel
Dallas County Schools
612 North Zang Boulevard
Dallas, Texas 75208

OR2017-02571

Dear Ms. Davis:

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# 644453 (DCS Ref. No. W001117-110716).

Dallas County Schools ("DCS") received a request for information pertaining to a named superintendent.¹ You state you will release some information. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code.² 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 information protected by other statutes. Section 21.355 of the Education Code provides, in relevant part, "[a] document evaluating the performance of a teacher or administrator is confidential." Educ. Code § 21.355(a). 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.). This

¹As you have not submitted a copy of the request for information, we take our description from your brief.

²We note DCS did not comply with section 552.301 of the Government Code in requesting a ruling from this office. *See* Gov't Code § 552.301(b), (e). Nonetheless, because the exception you claim can provide a compelling reason to overcome the presumption of openness, we will consider its applicability to the submitted information. *See id.* §§ 552.007, .302, .352.

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). 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.* at 4.

Upon review, we find the submitted information consists of evaluations of an administrator by the district. Although you inform us DCS’s policy manual requires superintendents to maintain a “permanent, provisional, or professional teacher’s certificate[,]” you have not informed us whether the named superintendent was certified as an administrator by the State Board of Educator Certification and acting as an administrator at the time the evaluations were prepared. *See* ORD 643 at 4. Accordingly, we must rule conditionally. To the extent the named superintendent held an administrator’s certificate under chapter 21 of the Education Code and was performing the functions of an administrator when the information was created, DCS 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 superintendent did not hold an administrator’s certificate under chapter 21 of the Education Code or was not performing the functions of an administrator when the information was created, 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, DCS 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,



Meagan J. Conway
Assistant Attorney General
Open Records Division

MJC/sb

Ref: ID# 644453

Enc. Submitted documents

c: Requestor
(w/o enclosures)