



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 26, 2017

Mr. Peter K. Rusek
Counsel for the Waco Independent School District
Sheehy, Lovelace & Mayfield, P.C.
510 North Valley Mills Drive, Suite 500
Waco, Texas 76710

OR2017-08833

Dear Mr. Rusek:

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# 654518 (PIR No. 66013410).

The Waco Independent School District (the "district"), which you represent, received a request for a copy of a named educator's last Professional Development and Appraisal System ("PDAS") observation completed by the requestor.¹ You claim the submitted

¹As you have not submitted a copy of the request for information, we take our description as quoted in your brief to our office.

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.

Initially, we note the requestor only seeks the named educator's last PDAS observation completed by the requestor, which we have marked. Accordingly, the remaining submitted information is not responsive to the instant request. The district need not release non-responsive information in response to this request, and this ruling will not address that 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. Section 552.101 encompasses section 21.355 of the Education Code. Section 21.355(a) provides "[a] document evaluating the performance of a teacher or administrator is confidential." Educ. Code § 21.355(a). Additionally, the Third Court of Appeals 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." *N. E. Indep. Sch. Dist. v. Abbott*, 212 S.W.3d 364 (Tex. App.—Austin 2006, no pet.). 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. *See* Open Records Decision No. 643 at 3 (1996). We also determined a "teacher" for purposes of section 21.355 means a person who (1) 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 (2) is engaged in the process of teaching, as that term is commonly defined, at the time of the evaluation. *See id.* at 4.

You contend the responsive information is confidential under section 21.355 of the Education Code. You assert the information at issue evaluates the performance of a teacher who holds the appropriate certificate for the purposes of section 21.355. Upon review, we conclude the submitted information consists of an evaluation of a teacher's performance and is subject to section 21.355. Therefore, the district must withhold the responsive information under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code.

²We note the district did not comply with section 552.301 of the Government Code in requesting a ruling from this office. *See* Gov't Code § 552.301(e). Nonetheless, because section 552.101 of the Government Code 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. Although you also raise section 552.102 of the Government Code, you have not provided any arguments to support this exception. Therefore, we assume you have withdrawn your claim this section applies to the submitted information. *See id.* §§ 552.301, .302.

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,



Britni Ramirez
Assistant Attorney General
Open Records Division

BR/som

Ref: ID# 654518

Enc. Submitted documents

c: Requestor
(w/o enclosures)