



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 8, 2017

Ms. JoAnna Talley
Office of Legal Services
Fort Worth Independent School District
100 North University Drive, Suite SW 172
Fort Worth, Texas 76107

OR2017-09822

Dear Ms. Talley:

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# 656674 (Ref.# W000868).

The Fort Worth Independent School District (the "district") received a request for specified information pertaining to any disciplinary action taken against a named district employee. You state the district has redacted information pursuant to the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232g(a).¹ You claim 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 or an adult student's 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 educational records. We have posted a copy of the letter from the DOE on the Attorney General's website at <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. We note section 21.355 does not apply to evaluations relating to an individual’s duties as a coach. *See* Educ. Code § 21.353 (teachers shall be appraised only on basis of classroom teaching performance and not in connection with extracurricular activities).

You assert the submitted information consists of written evaluations that are confidential under section 21.355. You inform us, and have submitted documentation reflecting, the teacher at issue held the appropriate certification at the time of the evaluations. Based on your representations and our review, we agree the information we marked constitutes 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 at issue constitutes an evaluation for the purposes of section 21.355 of the Education Code. Therefore, the district may not withhold the remaining information at issue under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code.

Section 552.137 of the Government Code excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See* Gov’t Code § 552.137(a)-(c). Accordingly, the district must withhold the personal e-mail address we marked under section 552.137 of the Government Code, unless the individual to whom the e-mail address belongs affirmatively consents to its release. *See id.* § 552.137(b).

In summary, the district must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code. The district must withhold the e-mail address we marked under section 552.137 of the Government Code, unless the individual to whom the e-mail address belongs affirmatively consents to its release. The district must release the remaining 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,

A handwritten signature in black ink that reads "Ashley Crutchfield". The signature is written in a cursive, flowing style.

Ashley Crutchfield
Assistant Attorney General
Open Records Division

AC/bw

Ref: ID# 656674

Enc. Submitted documents

c: Requestor
(w/o enclosures)