



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 6, 2017

Ms. Kristi Godden
Counsel for the La Joya Independent School District
O'Hanlon, McCollom, & Demerath
808 West Avenue
Austin, Texas 78701

OR2017-15054

Dear Ms. Godden:

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# 665233 (ID# LJISD-041).

The La Joya Independent School District (the "district"), which you represent, received a request for information pertaining to the termination of the requestor. You state the district has redacted certain 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.

Initially, we note you have informed us the information you have redacted is not responsive to the instant request. This ruling does not address the public availability of non-responsive information, and the district is not required to release non-responsive information in response to this request.

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

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>

Code § 552.101. Section 552.101 encompasses information protected by other statutes, including 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.” *Abbott v. N.E. Indep. Sch. Dist.*, 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 submitted information consists of confidential evaluations of a district teacher by the district. You assert the employee at issue was certified as teacher by the State Board of Educator Certification and was acting as a teacher at the time the evaluations were prepared. Upon review, we find some of the information at issue, which we marked, consists of evaluations of a district teacher. Thus, the district must generally withhold the information we marked under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code.² However, section 21.352(c) of the Education Code specifically provides “[e]ach teacher is entitled to receive a written copy of the evaluation on its completion.” Educ. Code § 21.352(c); *see id.* § 21.352(a) (prescribing appraisal process and performance criteria each school district shall use). In this instance, the requestor is the individual whose evaluations are at issue. Therefore, to the extent the evaluations are the type contemplated by section 21.352, this requestor has a right of access to the information at issue pursuant to section 21.352(c). However, if this requestor does not have a right of access under section 21.352(c), then the district must withhold the marked information under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code. Further, we find you have failed to demonstrate any of the remaining information at issue consists of documents evaluating the performance of a teacher for the purposes of section 21.355 of the Education Code. Therefore, the district may not withhold any of the remaining information at issue under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy,

²As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

both prongs of this test must be satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). In this instance, the requestor has a right of access to her own information pursuant to section 552.023 of the Government Code. *See* Gov't Code § 552.023(a) (governmental body may not deny access to person to whom information relates or person's agent on ground that information is considered confidential by privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Accordingly, the district may not withhold any of the remaining information from this requestor under section 552.101 of the Government Code on the basis of common-law privacy.

In summary, if this requestor does not have a right of access under section 21.352(c) of the Education Code, 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 release the remaining information.³

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,



Emily Kunst
Attorney
Open Records Division

EK/eb

³We note the requestor has a right of access to some of the information being released. *See* Gov't Code § 552.023(b); ORD 481 at 4. Thus, the district must again seek a decision from this office if it receives another request for the same information from another requestor.

Ref: ID# 665233

Enc. Submitted documents

c: Requestor
(w/o enclosures)