



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 11, 2017

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

OR2017-18320

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# 670281 (Waco ISD ID# 66023670).

The Waco Independent School District (the "district"), which you represent, received two requests from the same requestor for evaluations of the district's dyslexia specialists during specified time periods and notes taken by a named district employee during a specified visit. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code.¹ Further, you state release of the submitted information may implicate the interests of the district's dyslexia specialists. Accordingly, you state, and provide documentation showing, you notified these individuals of the requests for information and of their rights to submit arguments to this office as to why the information

¹We 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 for the submitted information, you provide no arguments explaining how this exception is applicable to the information at issue. Therefore, we assume you no longer assert this exception. *See id.* §§ 552.301, .302.

at issue should not be released.² *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released). We have considered your arguments and reviewed the submitted information.

Initially, you inform us some of the requested information was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2017-10680 (2017). In Open Records Letter No. 2017-10680, we concluded the district must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code. There is no indication the law, facts, and circumstances on which the prior ruling was based have changed. Accordingly, for the requested information that is identical to the information previously requested and ruled upon by this office, we conclude the district must continue to rely on Open Records Letter No. 2017-10680 as a previous determination and withhold the identical information in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes information is or is not excepted from disclosure). However, we will address your arguments against the disclosure of the submitted information that is not subject to the prior ruling.

Next, we note some of the submitted information is not responsive to the instant requests because it does not consist of evaluations of the district's dyslexia specialists during the specified time periods or notes taken by the named district employee during the specified visit. This ruling does not address the public availability of any information that is not responsive to the requests and the district is not required to release such information in response to these requests.

Next, we note you have not submitted any information responsive to the request for notes taken by the named district employee during the specified visit. To the extent any information responsive to this portion of the request existed on the date the district received the request, we assume the district has released it. If the district has not released any such information, it must do so at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes no exceptions apply to requested information, it must release information as soon as possible).

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, which provides that "[a] document evaluating the performance of a teacher or administrator is

²As of the date of this letter, we have not received comments from the district dyslexia specialists explaining why the submitted information should not be released.

confidential.” *See* 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 of a school district. In Open Records Decision No. 643, we determined for the purposes of section 21.355, the word “teacher” means a person who is required to, and does in fact, hold a certificate or permit required under chapter 21 of the Education Code and is teaching at the time of his or her evaluation. *Id.*

You claim the submitted responsive information consists of evaluations and observations of teachers that are confidential under section 21.355 of the Education Code. You state, and provide documentation showing, the individuals at issue held the appropriate certificates and were teaching at the time of the evaluations. Based on your representations and our review, we conclude the responsive information we marked consists of evaluations of teachers’ performances subject to section 21.355. Therefore, the district must generally withhold the responsive information we marked under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code.

However, we note 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 spouse of one of the teachers whose evaluations are at issue. Therefore, if the requestor’s spouse’s evaluations at issue are of the type contemplated by section 21.352, then this requestor has a right of access to them under section 21.352(c) if he is acting as the authorized representative of his spouse and the district may not withhold that information under section 552.101 of the Government Code in conjunction with section 21.355 of the Government Code. However, if the requestor’s spouse’s evaluations at issue are not of the type contemplated by section 21.352 or the requestor is not acting as his spouse’s authorized representative, the requestor does not have a right of access under section 21.352(c), and the district must withhold all of the requestor’s spouse’s evaluations at issue under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code. In either event, the district must withhold the evaluations we marked that do not belong to the requestor’s spouse under section 552.101 of the Government Code in conjunction with section 21.355. However, we find the district failed to establish the remaining responsive information is confidential under section 21.355, and the district may not withhold it under section 552.101 of the Government Code on that ground.

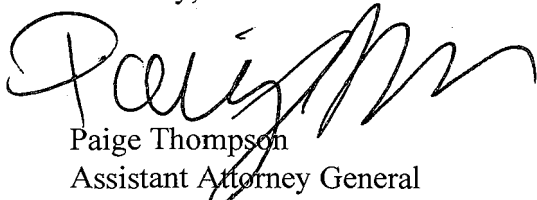
In summary, for the requested information that is identical to the information previously requested and ruled upon by this office, the district must continue to rely on Open Records Letter No. 2017-10680 as a previous determination and withhold the identical information in accordance with that ruling. If the requestor’s spouse’s evaluations at issue are not of the type contemplated by section 21.352 of the Education Code or the requestor is not acting as his spouse’s authorized representative, the district must withhold all of the requestor’s spouse’s evaluations under section 552.101 of the Government Code in conjunction with

section 21.355 of the Education Code. The district must withhold the responsive evaluations we marked that do not belong to the requestor's spouse under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code. The district must release the remaining responsive 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,



Paige Thompson
Assistant Attorney General
Open Records Division

PT/eb

Ref: ID# 670281

Enc. Submitted documents

c: Requestor
(w/o enclosures)

12 Third Parties
(w/o enclosures)