



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

November 7, 2017

Ms. Leticia D. McGowan  
Assistant General Counsel  
Dallas Independent School District  
9400 North Central Expressway, Suite 612  
Dallas, Texas 75231

OR2017-25499

Dear Ms. McGowan:

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# 683432 (ORR No. 16487).

The Dallas Independent School District (the "district") received a request for Level 2 grievance hearing decisions from a specified time period involving a named hearing officer. You state the district will release some information with redactions allowed by law. You claim some of the submitted information is excepted from disclosure under section 552.101 of the Government Code.<sup>1</sup> 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. 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 confidential and is not subject to disclosure under [the Act]." Act of May 16, 2017, 85th Leg., R.S., ch. 178, § 14, 2017 Tex. Sess., Law Serv. 320, 326 (Vernon) (to be codified as an amendment to Educ. Code § 21.355(a)). This office has interpreted section 21.355 to

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<sup>1</sup>Although you raise section 552.116 of the Government Code as an exception to disclosure, you have provided no arguments in support of this exception; therefore, we assume you have withdrawn it. See Gov't Code §§ 552.301, .302

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 also determined an “administrator” is a person who (1) is required to and does hold an administrator’s certificate under chapter 21 of the Education Code and (2) is performing as an administrator at the time of the evaluation. *Id.*

You contend portions of the submitted information reveal the results of confidential evaluations of district teachers and administrators by the district. You state the teachers and administrators at issue were certified as teachers or administrators by the State Board of Educator Certification and were acting as teachers or administrators at the time the evaluations were prepared. Upon review, we the information at issue, which you have highlighted, reveals the results of evaluations of district teachers or administrators. Thus, the district must withhold the information you have highlighted 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 chapter 411 of the Government Code, which pertains to criminal history record information (“CHRI”). Chapter 411 authorizes the Texas Department of Public Safety (the “DPS”) to compile and maintain CHRI from law enforcement agencies throughout the state and to provide access to authorized persons to federal criminal history records. *See* Govt’s Code §§ 411.042, .087. Section 411.0845 of the Government Code provides, in relevant part:

(a) The [DPS] shall establish an electronic clearinghouse and subscription service to provide [CHRI] to a particular person entitled to receive [CHRI] and updates to a particular record to which the person has subscribed under this subchapter.

(b) On receiving a request for [CHRI] from a person entitled to such information under this subchapter, the [DPS] shall provide through the electronic clearinghouse:

(1) the [CHRI] reported to the [DPS] or the Federal Bureau of Investigation relating to the individual who is the subject of the request; or

(2) a statement that the individual who is the subject of the request does not have any [CHRI] reported to the [DPS] or the Federal Bureau of Investigation.

...

(d) The [DPS] shall ensure that the information described by Subsection (b) is provided only to a person otherwise entitled to obtain [CHRI] under this subchapter. Information collected under this section is confidential and is not subject to disclosure under [the Act].

*Id.* § 411.0845(a)-(b), (d). Section 411.097(b) of the Government Code provides in part that “[a] school district . . . is entitled to obtain from the [DPS CHRI] maintained by the [DPS] that the district . . . is required or authorized to obtain under Subchapter C, Chapter 22, Education Code, that relates to a[n] . . . employee of the district[.]” *Id.* § 411.097(b). Pursuant to section 22.083(a-1) of the Education Code, a school district is authorized to obtain CHRI from the DPS’s electronic clearinghouse. *See* Educ. Code § 22.083(a-1)(1). Section 22.08391(d) of the Education Code states that any CHRI received by a school district is subject to section 411.097(d) of the Government Code. *Id.* § 22.08391(d). Section 411.097(d) provides in relevant part:

(d) [CHRI] obtained by a school district, charter school, private school, service center, commercial transportation company, or shared services arrangement in the original form or any subsequent form:

(1) may not be released to any person except:

- (A) the individual who is the subject of the information;
- (B) the Texas Education Agency;
- (C) the State Board for Educator Certification;
- (D) the chief personnel officer of the transportation company, if the information is obtained under Subsection (a)(2); or
- (E) by court order[.]

Gov’t Code § 411.097(d)(1). You state some of the remaining information consists of CHRI derived from the DPS criminal history clearinghouse. Upon review, we find the information you have highlighted is confidential under section 411.0845 of the Government Code. We note the requestor is not an individual authorized to receive information under section 411.097(d)(1). Thus, the district must withhold the information you have highlighted

under section 552.101 of the Government Code in conjunction with section 411.0845 of the Government Code.

In summary, the district must withhold the information you have highlighted under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code. The district must withhold the information you have highlighted under section 552.101 of the Government Code in conjunction with section 411.0845 of the Government Code. 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](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,



Matthew Taylor  
Assistant Attorney General  
Open Records Division

MHT/tdw

Ref: ID# 683432

Enc. Submitted documents

c: Requestor  
(w/o enclosures)