



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 1, 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

OR2017-27388

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# 685738 (Ref. # 66035188).

The Waco Independent School District (the "district"), which you represent, received a request for the employee files of five named employees. We understand you have no information responsive to a portion of the request.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, 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

¹The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990), 452 at 3 (1986), 362 at 2 (1983).

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 you only submitted employee evaluations pertaining to the named employees. To the extent any other information responsive to 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 exempts 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." *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 remaining 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 submitted information consists of evaluations of teachers' performances subject to section 21.355. Therefore, the district must withhold the remaining information under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code.

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. The district must withhold the remaining information under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code.

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, appearing to read 'S. Pounds', written in a cursive style.

Sidney M. Pounds
Assistant Attorney General
Open Records Division

SMP/gw

Ref: ID# 685738

Enc. Submitted documents

c: Requestor
(w/o enclosures)