



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

January 11, 2018

Ms. Yilse Janssen  
General Counsel  
Austin Independent School District  
1111 West 6<sup>th</sup> Street, Suite A-240  
Austin, Texas 78703

OR2018-00862

Dear Ms. Janssen:

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# 691349.

The Austin Independent School District (the "district") received a request for all reports, memorandums, analyses, and other documents written by a named individual pertaining to a specified school during a specified time period. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note some of the submitted information is subject to section 552.022 of the Government Code. Section 552.022(a) provides, in relevant part:

(a) [T]he following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

Gov't Code § 552.022(a)(1). The submitted information includes a completed report that is subject to subsection 552.022(a)(1). The district must release the completed report pursuant to subsection 552.022(a)(1) unless it is excepted from disclosure under section 552.108 of

the Government Code or expressly made confidential under the Act or other law. *See id.* Although you raise section 552.111 of the Government Code for this information, this section is a discretionary exception to disclosure and does not make information confidential under the Act. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (governmental body may waive section 552.111). Therefore, none of the information subject to subsection 552.022(a)(1) may be withheld under section 552.111. However, because section 552.101 of the Government Code makes information confidential under the Act, we will consider the applicability of this exception to the information subject to section 552.022(a)(1). Further, we will address your arguments for the information not subject to section 552.022.

Section 552.101 excepts “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. Section 552.101 encompasses information protected by other statutes, such as section 21.355 of the Education Code, which provides that “[a] document evaluating the performance of a teacher or administrator and is not subject to disclosure under [the Act].” 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, 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. North East Indep. Sch. Dist.*, 212 S.W.3d 364 (Tex. App.—Austin 2006, no pet.). In Open Records Decision No. 643, we determined an “administrator” for purposes of section 21.355 means a person who is required to, and does in fact, hold an administrator’s certificate under subchapter B of chapter 21 of the Education Code, and is performing the functions of an administrator, as that term is commonly defined, at the time of the evaluation. *See* ORD 643.

You state the submitted information consists of documents used to evaluate the performance of an administrator under section 21.355. You inform us, and provide documentation demonstrating, the administrator at issue held the appropriate certification at the time of the evaluation and was functioning as an administrator at the time of the evaluation. Based on your representations and our review, we agree the submitted information constitutes an evaluation as contemplated by section 21.355. Accordingly, 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.<sup>1</sup>


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.

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<sup>1</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure of the submitted information.

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,

A handwritten signature in black ink, appearing to read 'SMP', is written over the word 'Sincerely,'.

Sidney M. Pounds  
Assistant Attorney General  
Open Records Division

SMP/gw

Ref: ID# 691349

Enc. Submitted documents

c: Requestor  
(w/o enclosures)