



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 1, 2019

Mr. Jameson C. Baker
Counsel for the Judson Independent School District
Walsh, Gallegos, Trevino, Russo & Kyle, P.C.
P.O. Box 460606
San Antonio, Texas 78246

OR2019-05798

Dear Mr. Baker:

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# 753396.

The Judson Independent School District (the "district"), which you represent, received a request for specified information pertaining to a named employee and the district's football program.¹ The district states it is redacting some information pursuant to the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code.² The district also states it has made some of the requested information available

¹After receiving the request, the district sent the requestor an estimate of charges pursuant to section 552.2615 of the Government Code. *See* Gov't Code § 552.2615. The estimate of charges required the requestor to provide a deposit for payment of anticipated costs under section 552.263 of the Government Code. *See id.* § 552.263(a). The district states it received the deposit on December 7, 2018. *See id.* § 552.263(e) (if governmental body requires deposit or bond for anticipated costs pursuant to section 552.263, request for information is considered to have been received on date that governmental body receives deposit or bond).

²The 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 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 education records. We have posted a copy of the letter from the DOE to this office on the Attorney General's website: <https://www.texasattorneygeneral.gov/sites/default/files/files/divisions/open-government/20060725-USDOE-FERPA.pdf>.

to the requestor, but claims the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the claimed exception and reviewed the submitted information.

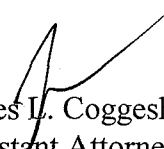
Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. This section encompasses section 21.355 of the Education Code. Section 21.355(a) provides “[a] document evaluating the performance of a teacher or administrator is confidential[.]” Educ. Code § 21.355(a). Additionally, the Third Court of Appeals has concluded 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. We note section 21.355 does not apply to evaluations relating to an individual’s duties as a coach. *See* Educ. Code § 21.353 (teachers shall be appraised only on basis of classroom teaching performance and not in connection with extracurricular activities).

The district asserts the submitted information evaluates the performance of the named employee. The district also states the employee at issue held a teacher’s certificate under chapter 21 of the Education Code and was performing the functions of a teacher at the time of the evaluations. Upon review, we find some of the submitted information, which we have marked, is confidential under section 21.355. Therefore, the district must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 21.355. We note some of the remaining information at issue pertains to the evaluation of an employee in his capacity as a coach. Therefore, we find the district has failed to demonstrate this information evaluates the performance of a teacher for purposes of section 21.355. We also find the district has not established the rest of the remaining information consists of “[a] document evaluating the performance of a teacher or administrator” as contemplated by section 21.355. Accordingly, we conclude the district has not established the remaining information is confidential under section 21.355, and the district may not withhold it under section 552.101 on that ground. Consequently, 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, 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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/gw

Ref: ID# 753396

Enc. Submitted documents

c: Requestor
(w/o enclosures)