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ATTORNEY GENERAL OF TEXAS

July 10, 2019

Mr. Mike Atkins
Counsel for Ector County Independent School District
Atkins, Hollmann, Jones, Peacock, Lewis & Lyon, P.C.
3800 East 42nd Street, Suite 500
Odessa, Texas 79762

OR2019-18586

Dear Mr. Atkins:

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# 774245.

The Ector County Independent School District (the "district") received a request for the personnel file of a named employee. The district states it has redacted social security numbers pursuant to section 552.147(a-1) of the Government Code.¹ The district also states it has released some of the requested information. 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.

Section 552.101 of the Government Code excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses other statutes, such as section 21.355 of the Education Code, which provides that "[a] document evaluating the performance of a teacher or administrator is confidential." 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, a court has concluded that a written reprimand constitutes an evaluation for purposes of

¹The social security number of an employee of a school district in the custody of the district is confidential. Gov't Code § 552.147(a-1).

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 for purposes of section 21.355, the word “teacher” means a person who is required to and does in fact hold a teaching certificate under subchapter B of chapter 21 of the Education Code and who is in the process of teaching, as that term is commonly defined, at the time of the evaluation. *See id.* at 4. Further, 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 as an administrator, as that term is commonly defined, at the time of the evaluation. *Id.* We further determined “teacher interns, teacher trainees, librarians, educational aids and counselors cannot be teachers or administrators for purposes of section 21.355.” *Id.* at 5.

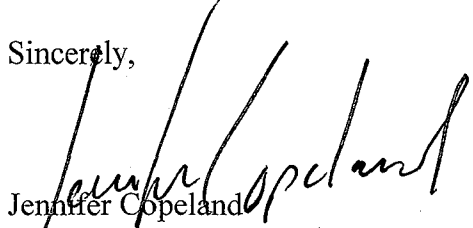
You assert the submitted information of the Government Code consists of written evaluations that are confidential under section 21.355. Upon review, we find some of the information at issue, which we marked, consists of evaluations as contemplated by section 21.355 of the Education Code. However, we are unable to discern whether, at the time of these evaluations, the employee at issue was certified as a teacher or administrator and was performing the functions of a teacher or an administrator. Accordingly, we must rule conditionally. To the extent the employee at issue was certified as a teacher or an administrator and was evaluated for the employee’s performance as a teacher or administrator in the evaluations at issue, the district must withhold the evaluations we marked under section 552.101 in conjunction with section 21.355. To the extent the employee at issue was not certified as a teacher or administrator or was not performing the functions of a teacher or administrator at the time of the evaluations at issue, the district may not withhold this information under section 552.101 on that ground. Further, we note the remaining evaluations at issue pertain to the employee’s performance as a counselor. Thus, we find the district has not shown any of the counselor evaluations evaluate the performance of an administrator or teacher for the purposes of section 21.355. Therefore, the district may not withhold these evaluations under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code.

In summary, to the extent the employee at issue was certified as a teacher or an administrator and was evaluated for the employee’s performance as a teacher or administrator in the evaluations at issue, the district must withhold the evaluations we have marked under section 552.101 of the Government Code in conjunction with section 21.355 of the Education 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, 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,



Jennifer Copeland
Assistant Attorney General
Open Records Division

JC/be

Ref: ID# 774245

Enc. Submitted documents

c: Requestor
(w/o enclosures)