



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 16, 2019

Ms. Morgan Beam
Counsel for the Nederland Independent School District
Walsh, Gallegos, Treviño, Russo & Kyle, P.C.
10375 Richmond Avenue, Suite 1357
Houston, Texas 77042

OR2019-19311

Dear Ms. Beam:

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# 774205 (Ref. No. 66080380).

The Nederland Independent School District (the "district"), which you represent, received a request for information pertaining to the disciplinary history of a named district employee. You state the district has released some information to the requestor. You claim the submitted information is not subject to the Act. In the alternative, 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 representative sample of information.¹

Initially, the district asserts the submitted information is not subject to the Act. Section 552.002(a) of the Government Code defines "public information" as information that is

¹We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

- (1) by a governmental body;
- (2) for a governmental body and the governmental body:
 - (A) owns the information;
 - (B) has a right of access to the information; or
 - (C) spends or contributes public money for the purpose of writing, producing, collecting, assembling, or maintaining the information; or
- (3) by an individual officer or employee of a governmental body in the officer's or employee's official capacity and the information pertains to official business of the governmental body.

Gov't Code § 552.002(a). Thus, virtually all of the information in a governmental body's physical possession constitutes public information and thus is subject to the Act. *Id.* § 552.002(a)(1); *see* Open Records Decision Nos. 549 at 4 (1990), 514 at 1-2 (1988). Information is "in connection with the transaction of official business" if the information is created by, transmitted to, received by, or maintained by a person or entity performing official business or a government function on behalf of a governmental body and the information pertains to official business of the governmental body. *See* Gov't Code § 552.002(a-1). Moreover, section 552.001 of the Act provides that it is the policy of this state that each person is entitled, unless otherwise expressly provided by law, at all times to complete information about the affairs of government and the official acts of public officials and employees. *See id.* § 552.001(a). You assert the submitted information is "not subject to disclosure, pursuant to . . . section 552.002 [of the Government Code.]" Upon review, we find the submitted information consists of information that was created and is maintained by the district for the transaction of official business. Accordingly, the submitted information is subject to the Act and must be released, unless the information falls within an exception to public disclosure under the Act.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. This section encompasses information protected by other statutes, such as section 21.355 of the Education Code, which provides, in part:

- (a) A document evaluating the performance of a teacher or administrator is confidential and 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). The Third Court of Appeals has concluded a written reprimand constitutes an evaluation for purposes of section 21.355 because “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.). This office has determined the term “teacher,” for purposes of section 21.355, means a person who is required to, and does in fact, hold a teacher’s 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.

You assert the submitted information consists of written reprimands and evaluations of the performance of a teacher employed by the district that were prepared while the subject of the evaluations was performing the functions of a teacher. You inform us, and provide documentation demonstrating, the subject of the evaluations is a teacher who holds the appropriate certificate under subchapter B of chapter 21 of the Education Code. Based on your representations and our review, we find the information at issue consists of evaluations of the performance of a teacher for the purposes of 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.

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,



Blake Brennan
Attorney
Open Records Division

BB/gw

Ref: ID# 774205

c: Requestor