



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 30, 2019

Ms. Kristi Godden
Counsel for Edcouch-Elsa Independent School District
O'Hanlon, Demerath & Castillo
808 West Avenue
Austin, Texas 78701

OR2019-20904

Dear Ms. Godden:

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# 779649 (Ref. No. EEISD-19-005).

The Edcouch-Elsa Independent School District (the "district"), which you represent, received a request for specified information on a named former district employee. The district claims the submitted information is excepted from disclosure under section 552.101 of the Government Code. Additionally, the district states release of the submitted information may implicate the interests of the Texas Education Agency (the "TEA"). Accordingly, the district states, and provides documentation showing, it notified the TEA of the request for information and of the right to submit arguments to this office as to why the submitted information should not be released. *See Gov't Code* § 552.304 (interested party may submit comments stating why information should or should not be released). We have received comments from the TEA. We have reviewed the submitted arguments and 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 information protected by other statutes. Section 21.355 of the Education Code provides, in relevant part, "[a] document evaluating

the performance of a teacher or administrator is confidential.” Educ. Code § 21.355(a). 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 interpreted section 21.355 to apply to any document that evaluates, as that term is commonly understood, the performance of a teacher or administrator. *See* Open Records Decision No. 643 (1996). In Open Records Decision No. 643, we determined a “teacher” for purposes of section 21.355 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 is in the process of teaching, as that term is commonly defined, at the time of the evaluation. *Id.* at 4.

The district contends portions of the submitted information consist of confidential evaluations of a teacher by the district. The district informs us the teacher at issue held the appropriate certifications for purposes of section 21.355 and was acting as a teacher at the time the evaluations were prepared. Accordingly, the district must withhold the completed evaluations under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code.¹

Section 552.116 of the Government Code provides,

(a) An audit working paper of an audit of the state auditor or the auditor of a state agency, an institution of higher education as defined by Section 61.003, Education Code, a county, a municipality, a school district, a hospital district, or a joint board operating under Section 22.074, Transportation Code, including any audit relating to the criminal history background check of a public school employee, is excepted from [required public disclosure]. If information in an audit working paper is also maintained in another record, that other record is not excepted from [public disclosure] by this section.

(b) In this section:

(1) “Audit” means an audit authorized or required by a statute of this state or the United States, the charter or an ordinance of a municipality, an order of the commissioners court of a county, the bylaws adopted by or other action of the governing board of a hospital district, a resolution or other action of a board of trustees of a school district, including an audit by the district relating to the criminal

¹As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

history background check of a public school employee, or a resolution or other action of a joint board described by Subsection (a) and includes an investigation.

(2) "Audit working paper" includes all information, documentary or otherwise, prepared or maintained in conducting an audit or preparing an audit report, including:

(A) intra-agency and interagency communications; and

(B) drafts of the audit report or portions of those drafts.

Gov't Code § 552.116. The TEA states the remaining information consists of audit working papers prepared or maintained by the TEA's Division of Educator Investigations in conjunction with investigations of alleged educator misconduct. The TEA informs us the investigations are authorized by sections 21.031 and 21.041 of the Education Code and section 249.14 of title 19 of the Texas Administrative Code. *See* Educ. Code §§ 21.031(a) (the agency shall regulate and oversee standards of conduct of public school educators), .041(b) (the agency shall propose rules providing for disciplinary proceedings); 19 T.A.C. § 249.14(a) (the agency may obtain and investigate information concerning an educator's alleged improper conduct). Based on these representations and our review, we agree the information at issue consists of audit working papers for purposes of section 552.116. Accordingly, the district may withhold the remaining information under section 552.116 of the Government Code on behalf of the TEA.²

In summary, the district must withhold the completed evaluations under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code. The district may withhold the remaining information under section 552.116 of the Government Code on behalf of the TEA.

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

²As our ruling is dispositive, we need not address the remaining argument against disclosure of this information.

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 "Lecelle Clarke". The signature is fluid and cursive, with the first name being more prominent.

Lecelle Clarke
Attorney
Open Records Division

LC/eb

Ref: ID# 779649

Enc. Submitted documents

c: Requestor
(w/o enclosures)