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ATTORNEY GENERAL OF TEXAS

December 2, 2020

Mr. Victor I. Cerda
Counsel for the San Antonio Independent School District
Escamilla & Poneck, LLP
700 North St. Mary's Street, Suite 850
San Antonio, Texas 78205

OR2020-30010

Dear Ms. Herrera and Mr. Cerda:

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# 856918.

The San Antonio Independent School District (the "district") received a request for information pertaining to a specified program. You state the district has released some of the requested information. You also state the district has redacted account numbers pursuant to section 552.136 of the Government Code.¹ 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.²

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

¹ Section 552.136(c) of the Government Code allows a governmental body to redact the information described in section 552.136(b) without the necessity of seeking a decision from the attorney general. *See* Gov't Code § 552.136(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.136(e). *See id.* § 552.136(d), (e).

² We assume that 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 that those records contain substantially different types of information than that submitted to this office.

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 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 concluded that a “teacher” for purposes of section 21.355 means a person who (1) is required to and does in fact hold a certificate or permit required under chapter 21 of the Education Code and (2) is teaching at the time of his or her evaluation. *See* ORD 643.

You assert the submitted information evaluates the performance of district teachers. We understand the individuals whose information is at issue were employed by the district as teachers when their performances were evaluated. However, you do not inform us whether the individuals at issue held a teaching certificate or permit under chapter 21 of the Education Code when the information at issue was created. Therefore, we must rule conditionally. If the teachers whose information is at issue held a teaching certificate or permit under chapter 21 of the Education Code at the time the information at issue was created, then the information we marked is confidential under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code. However, if the teachers at issue did not hold a teaching certificate or permit under chapter 21, the information we marked is not confidential under section 21.355 and may not be withheld under section 552.101 on that basis. In either instance, we find you failed to demonstrate any of the remaining information constitutes a document evaluating the performance of a teacher for the purposes of section 21.355 of the Education Code. Therefore, in either instance, the district may not withhold the remaining information under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code, and it must be released.

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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG’s Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,

Emily Kunst
Assistant Attorney General
Open Records Division

EK/mo

Ref: ID# 856918

Enc. Submitted documents

c: Requestor
(w/o enclosures)