



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 28, 2022

Mr. Stuart W. Bowen, Jr.
General Counsel
Austin Independent School District
4000 South IH 35 Frontage Road
Austin, Texas 78704

OR2022-02608

Dear Mr. Bowen:

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# 928482.

The Austin Independent School District (the "district") received a request for certain information pertaining to two named district employees. The district claims the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions the district claims and reviewed the submitted information.

Initially, we note some of the submitted information is not responsive to the instant request because it does not pertain to the requested employees. This ruling does not address the public availability of the non-responsive information, which we have marked, and the district need not release it in response to the request. Further, although the district indicates Exhibit E was submitted as supporting documentation, upon review, we find Exhibit E is responsive to the request for information because it pertains to the employees named in the request. Accordingly, we will consider the applicability of any exceptions to disclosure of Exhibit E. We will also consider the district's arguments against disclosure of the remaining 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).

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 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. Upon review, we find some of the responsive information consists of evaluations of a teacher by the district. The district states, and provides documentation showing, the teacher at issue was certified as a teacher by the State Board of Educator Certification and was acting as a teacher at the time the evaluations were prepared. Accordingly, the district must withhold the responsive information in Exhibit B under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code.

Section 552.101 of the Government Code also encompasses information protected by section 261.201 of the Family Code, which provides, in part, as follows:

(a) [T]he following information is confidential, is not subject to public release under [the Act] and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201(a). We note Exhibit E relates to an investigation of alleged or suspected child abuse or neglect conducted by the district’s police department (the “department”). *See id.* §§ 101.003(a) (defining “child” for purposes of this section as person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes), 261.001(1), (4) (defining “abuse” and “neglect” for purposes of chapter 261 of the Family Code). Upon review, we find this information was used or developed in an investigation of alleged child abuse or neglect and is subject to section 261.201 of the Family Code. The district does not indicate the department has adopted a rule that governs the release of this type of information. Therefore, we assume no such regulation exists. Given that assumption, we conclude the district must withhold the information pertaining to Exhibit E under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code.¹ *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute).

¹ As our ruling is dispositive, we need not address the district’s argument against disclosure of this information.

In summary, the district must withhold the responsive information in Exhibit B under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code. The district must withhold the information pertaining to Exhibit E under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family 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 <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,

Gerald A. Arismendez
Assistant Attorney General
Open Records Division

GAA/ba

Ref: ID# 928482

Enc. Submitted documents

c: Requestor
(w/o enclosures)