



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 13, 2022

Ms. Rebecca Bradley
Counsel for the Plano Independent School District
Abernathy, Roeder, Boyd & Hullett, P.C.
1700 Redbud Boulevard, Suite 300
McKinney, Texas 75070

OR2022-31514

Dear Ms. Bradley:

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# 975257 (Reference No. 1372).

The Plano Independent School District (the "district"), which you represent, received a request for the personnel file for a named former teacher, including any disciplinary and separation information.¹ You state the district released some information to the requestor. You also state the district has redacted confidential student records pursuant to the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code.² You claim the submitted information is excepted from disclosure under

¹ You state, and provide documentation demonstrating, the district sought and received clarification of the information requested. *See* Gov't Code § 552.222(b) (governmental body may communicate with requestor for purposes of clarifying or narrowing request); *see also* *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when governmental entity, acting in good faith, requests clarification or narrowing of unclear or overbroad request for public information, ten-day period to request attorney general ruling is measured from date request is clarified or narrowed).

² The United States Department of Education Family Policy Compliance Office (the "DOE") has informed this office FERPA does not permit state and local educational authorities to disclose to this office, without parental or student consent, unredacted, personally identifiable information contained in education records for the purpose of our review in the open records ruling process under the Act. The DOE has determined FERPA determinations must be made by the educational authority in possession of the education records. A copy of this letter may be found on the Office of the Attorney General's website:

sections 552.101 and 552.135 of the Government Code. We have considered the claimed exceptions and reviewed the submitted information.

Initially, we note the requestor specifically excludes dates of birth, certain e-mail addresses, driver's license numbers, and social security numbers from the request. Additionally, you inform us the requestor has agreed to redaction of information subject to section 552.117 of the Government Code.³ Accordingly, dates of birth, certain e-mail addresses, driver's license numbers, social security numbers, and information subject to section 552.117 within the submitted documents are not responsive to the instant request. This ruling does not address the public availability of any information that is not responsive to the request and the district is not required to release such information in response to this request.

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses section 21.355 of the Education Code, which provides, in relevant part, "[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 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. We also determined for purposes of section 21.355, an "administrator" 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.*

Upon review, we find you have failed to demonstrate the information at issue consists of documents evaluating the performance of a teacher or administrator for purposes of section 21.355 of the Education Code. Therefore, the district may not withhold any of the submitted responsive information under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code.

Section 552.135 of the Government Code provides, in relevant part, the following:

<https://www.texasattorneygeneral.gov/sites/default/files/files/divisions/open-government/20060725-USDOE-FERPA.pdf>.

³ Section 552.024(c)(2) of the Government Code authorizes a governmental body to redact information protected by section 552.117(a)(1) of the Government Code without the necessity of requesting a decision under the Act if the current or former employee or official to whom the information pertains timely chooses not to allow public access to the information. *See* Gov't Code § 552.024(c)(2). If a governmental body redacts such information, it must notify the requestor in accordance with subsections 552.024(c-1) and (c-2). *See id.* § 552.024(c-1)-(c-2).

(a) “Informer” means a student or a former student or an employee or former employee of a school district who has furnished a report of another person’s or persons’ possible violation of criminal, civil, or regulatory law to the school district or the proper regulatory enforcement authority.

(b) An informer’s name or information that would substantially reveal the identity of an informer is excepted from [required public disclosure].

(c) Subsection (b) does not apply:

(1) if the informer is a student or former student, and the student or former student, or the legal guardian, or spouse of the student or former student consents to disclosure of the student’s or former student’s name; or

(2) if the informer is an employee or former employee who consents to disclosure of the employee’s or former employee’s name; or

(3) if the informer planned, initiated, or participated in the possible violation.

Gov’t Code § 552.135(a)-(c). Because the legislature limited the protection of section 552.135 to the identity of a person who reports a possible violation of “law,” a school district that seeks to withhold information under that exception must clearly identify to this office the specific civil, criminal, or regulatory law that is alleged to have been violated. *See id.* § 552.301(e)(1)(A). Additionally, individuals who provide information in the course of an investigation, but do not report a violation of law are not informants for purposes of section 552.135 of the Government Code. You claim the submitted responsive information reveals the identity of an informer who reported possible violations of criminal and regulatory laws. Upon review, we find the information we marked reveals the identities of informers for purposes of section 552.135 of the Government Code. Accordingly, the district must withhold the information we marked under section 552.135 of the Government Code. However, we find you have failed to demonstrate any of the remaining information at issue reveals the identity of an informer for the purposes of section 552.135 of the Government Code. Therefore, the district may not withhold any of the remaining responsive information on that ground. The district must release the remaining responsive 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 <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,

James M. Graham
Assistant Attorney General
Open Records Division

JMG/pt

Ref: ID# 975257

Enc. Submitted documents

c: Requestor
(w/o enclosures)