



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 6, 2022

Mr. Daniel Stockton
General Counsel
Frisco Independent School District
5515 Ohio Drive
Frisco, Texas 75035

OR2022-37670

Dear Mr. Stockton:

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# 984350 (Ref. No. 2279).

The Frisco Independent School District (the "district") received a request for e-mails and instant messages involving a named employee during a stated time period. We understand the district redacted student-identifying information pursuant to the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code.¹ We also understand the district redacted certain information subject to section 552.117(a)(1) of the Government Code as permitted by section 552.024(c) of the Government Code.² You state the district has released some of the requested information. You claim the submitted information is excepted from disclosure under section 552.101 of

¹ 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: <https://www.texasattorneygeneral.gov/sites/default/files/files/divisions/open-government/20060725-USDOE-FERPA.pdf>.

² Section 552.117(a)(1) of the Government Code excepts from disclosure the home addresses and telephone numbers, emergency contact information, social security numbers, and family member information of current or former officials or employees of a governmental body. See Gov't Code § 552.117(a)(1). Section 552.024 of the Government Code authorizes a governmental body to withhold information subject to section 552.117 without requesting a decision from this office if the current or former employee or official chooses not to allow public access to the information. See *id.* § 552.024(c).

the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note some of the submitted information, which we have marked, is not responsive to the instant request for information because it does not consist of e-mails or instant messages involving the named employee. 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.³

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, including section 21.355 of the Education Code, which 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 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.

You assert the responsive information evaluates the performances of district employees. We understand the individuals whose information is at issue were employed by the district as teachers when their performances were evaluated. You do not inform us, however, whether any of 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 individuals whose information is at issue held a teaching certificate or permit under chapter 21 of the Education Code when the information was created, the district must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code.⁴ However, if the individuals at issue did not hold a teaching certificate or permit under chapter 21 of the Education Code, the information at issue is not confidential under section 21.355 of the Education Code and it may not be withheld under section 552.101 of the Government Code on that basis. In either instance, we find you have failed to demonstrate any of the remaining information at issue 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 any portion of the remaining responsive information

³ As we are able to make this determination, we need not address your arguments against disclosure of this information.

⁴ In this instance, as our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

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 the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. Upon review, we find you have failed to demonstrate any of the remaining information at issue is highly intimate or embarrassing and not of legitimate public concern. Thus, the district may not withhold any portion of the remaining responsive information under section 552.101 in conjunction with common-law privacy.

In summary, if the individuals whose information is at issue held a teaching certificate or permit under chapter 21 of the Education Code when the information was created, the district must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code. 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,

Alexandra C. Burks
Assistant Attorney General
Open Records Division

ACB/pt

Ref: ID# 984350

Enc. Submitted documents

c: Requestor
(w/o enclosures)