



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 14, 2022

Mr. Robb D. Decker
Counsel for the Community Independent School District
Walsh, Gallegos, Trevino, Kyle & Robinson, P.C.
P.O. Box 460606
San Antonio, Texas 78246-0606

OR2022-38682

Dear Mr. Decker:

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# 985376 (PIR No. 05300.066 No. 2).

The Community Independent School District (the "district"), which you represent, received a request for information pertaining to four named employees. You state you will release some information to the requestor. You also state you will withhold student-identifying information pursuant to the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code.¹ You further state you will redact information pursuant to section 552.024(c) of the Government Code.² You claim the submitted information is excepted from disclosure under sections 552.101 and 552.102 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

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 an adult student's 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 educational records. We have posted a copy of the letter from the DOE on the Attorney General's website at <https://www.texasattorneygeneral.gov/sites/default/files/files/divisions/open-government/20060725-USDOE-FERPA.pdf>

² 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).

Section 552.102(b) of the Government Code excepts from public disclosure “a transcript from an institution of higher education maintained in the personnel file of a professional public school employee[.]” Gov’t Code § 552.102(b). This exception further provides, however, that “the degree obtained or the curriculum on a transcript in the personnel file of the employee” are not excepted from disclosure. *Id.*; *see also* Open Records Decision No. 526 (1989). Thus, with the exception of the employee’s name, courses taken, and the degree obtained, the district must withhold the submitted college transcript under section 552.102(b) of the Government Code.

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. Section 552.101 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 an “administrator” for purposes of section 21.355 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.* at 4. 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.).

The district asserts the remaining information evaluates the performance of a district teacher. You inform us the named teacher was certified as a teacher by the State Board of Educator Certification and was acting as a teacher at the time the evaluation was prepared. Based on your representations and our review, we find the district must withhold the remaining information under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code.

In summary, with the exception of the employee’s name, courses taken, and the degree obtained, the district must withhold the submitted college transcript under section 552.102(b) of the Government Code. The district must withhold the remaining information under section 552.101 of the Government Code in conjunction with section 21.355 of the Education 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,

Kimbell Kesling
Assistant Attorney General
Open Records Division

KK/jxd

Ref: ID# 985376

c: Requestor