



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 5, 2010

Ms. Leticia D. McGowan
School Attorney
Dallas Independent School District
3700 Ross Avenue
Dallas, Texas 75204

OR2010-01821

Dear Ms. McGowan:

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# 369935 (Dallas Independent School District ORR #8998).

The Dallas Independent School District (the "district") received a request for all records pertaining to federal or state interventions in process, or proposed, for fourteen named high schools. You state you will release some of the requested information to the requestor. You claim that 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 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 exception encompasses information that other statutes make confidential. You raise section 552.101 in conjunction with 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. In Open Records Decision No. 643 (1996), this office interpreted 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* ORD 643 at 3. Additionally, we determined that for the 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. *See id.* at 4. We note that a court has

concluded that a written reprimand constitutes an evaluation for the 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.” *North East Indep. Sch. Dist. v. Abbott*, 212 S.W.3d 364 (Tex. App.—Austin 2006, no pet.).

You contend that the submitted information consists of teacher evaluations that are confidential under section 21.355. You state that the information at issue pertains to individuals employed by the district as teachers. You further state that these individuals were required to and did hold their teaching certificates pursuant to subchapter B of chapter 21 of the Education Code at the time of the evaluations. Based on your representations and our review of the submitted information, we conclude that the information we have marked is confidential under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code. However, we find you have not demonstrated that the remaining information constitutes an evaluation of a teacher for the purposes of section 21.355. We therefore find the district may not withhold any of the remaining information under section 552.101 on the basis of section 21.355.

We note portions of the remaining information may be subject to section 552.117(a)(1) of the Government Code.¹ Section 552.117(a)(1) excepts from disclosure the home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who request this information be kept confidential under section 552.024 of the Government Code. *See Gov’t Code* §§ 552.117(a)(1), .024. We note that a post office box number is not a “home address” for purposes of section 552.117.² Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it is made. *See Open Records Decision No. 530 at 5 (1989)*. The district may only withhold information under section 552.117(a)(1) on behalf of a former or current employee who made a request for confidentiality under section 552.024 prior to the date on which the request for information was made. We have marked information that may be subject to section 552.117. You do not indicate whether the district employees at issue elected to keep their personal information confidential prior to the district receiving the instant request for information. We must therefore rule conditionally. If the employees whose personal information we have marked timely elected to withhold such information under section 552.024, the district must withhold the marked information under section 552.117(a)(1) of the Government Code. If the

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987)*.

²*See Gov’t Code* § 552.117; *Open Records Decision No. 622 at 4 (1994)* (legislative history makes clear that purpose of section 552.117 is to protect public employees from being harassed at home) (citing House Committee on State Affairs, Bill Analysis, H.B. 1976, 69th Leg. (1985)).

employees did not timely elect confidentiality, the district may not withhold the marked information under section 552.117(a)(1), and this information must be released.

In summary, the district must withhold the information we have marked under section 552.101 in conjunction with section 21.355 of the Education Code. If the employees whose personal information we have marked timely elected to withhold such information under section 552.024, the district must withhold the marked information under section 552.117(a)(1) of the Government Code. The remaining information must be released to the requestor.

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 http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Adam Leiber
Assistant Attorney General
Open Records Division

ACL/rl

Ref: ID# 369935

Enc. Submitted documents

c: Requestor
(w/o enclosures)