



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 5, 2010

Mr. Hans P. Graff
Assistant General Counsel
Houston Independent School District
Hattie Mae White Educational Support Center
4400 West 18th Street
Houston, Texas 77092-8501

OR2010-04686

Dear Mr. Graff:

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# 374903.

The Houston Independent School District (the "district") received a request for all personnel, disciplinary, and investigation (professional standards) records of a named district employee at Alameda Elementary School. You indicate the district has released some of the requested information with redactions pursuant to section 552.024 of the Government Code.¹ You claim the submitted documents are 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. Section 552.101 encompasses information protected by other statutes, including section 21.355 of the Education Code, which provides that "[a] document

¹Section 552.024(c) of the Government Code authorizes a governmental body to redact, without the necessity of requesting a decision from this office, the home address, home telephone number, social security number, and family member information of a current or former employee who properly elected to keep this information confidential. Gov't Code § 552.024(c).

evaluating the performance of a teacher or administrator is confidential.” Educ. Code § 21.355. This office has interpreted this section to apply to any document that evaluates, as that term is commonly understood, the performance of a teacher or administrator. Open Records Decision No. 643 at 3 (1996). In Open Records Decision No. 643, we determined that 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 engaged in the process of teaching, as that term is commonly defined, at the time of the evaluation. *See id.* at 4. Similarly, an “administrator” is someone who is required to hold and does hold a certificate required under chapter 21 of the Education Code and is administering at the time of his or her evaluation. *Id.* We further determined that “teacher interns, teacher trainees, librarians, educational aids and counselors cannot be teachers or administrators for purposes of section 21.355.” *See id.* at 5. We note the Third Court of Appeals has held 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.” *See Abbott v. North East Indep. Sch. Dist.*, 212 S.W.3d 364 (Tex. App.—Austin, 2006).

You state, and provide documentation showing, the named district employee is a certified teacher who has held various teacher certifications for several years. Upon review, we agree some of the submitted documents are evaluations of this employee’s performance as a teacher. Thus, this information, which we have marked, must be withheld under section 552.101 in conjunction with section 21.355 of the Education Code.

Most of the remaining information, however, consists of evaluations of the employee as a counselor and “assessment specialist.” As stated above, this office has determined counselors are not teachers or administrators for purposes of section 21.355 of the Education Code. *See* ORD 643 at 5. Furthermore, you have not explained, nor can we discern, how the “assessment specialist” evaluations evaluate the employee as a teacher or administrator. Thus, the counselor and “assessment specialist” evaluations may not be withheld under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code.

One of the remaining documents is a written reprimand of the employee during her employment as a teacher. We note, however, the written reprimand does not evaluate the employee’s teaching performance. *See* Educ. Code § 21.355. You have not explained how the written reprimand constitutes an evaluation as contemplated by section 21.355 of the Education Code; therefore the written reprimand may not be withheld under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code.

Finally, you have not explained how the remaining documents, which consist of application reviews and employment references predating the named employee’s certification as a teacher or administrator and employment with the district, are evaluations of a teacher or administrator who holds a teacher’s or administrator’s certificate under section 21.355 of the

Education Code. Consequently, we find the remaining documents may not be withheld under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code. As you have claimed no other exceptions to disclosure, the remaining documents must be released.²

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,



Jessica Eales
Assistant Attorney General
Open Records Division

JCE/eeg

Ref: ID# 374903

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²Because you indicate you withheld other personal information of this employee pursuant to section 552.117 of the Government Code, we presume the employee timely elected confidentiality under section 552.024. Therefore, the home address, home telephone number, and social security number in the documents subject to release must be withheld under section 552.117(a)(1). See Gov't Code §§ 552.024, 117.