



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 1, 2010

Ms. Christine Badillo
Walsh, Anderson, Brown, Gallegos & Green, P.C.
P.O. Box 2156
Austin, Texas 78768

OR2010-07884

Dear Ms. Badillo:

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# 381155.

The Dripping Springs Independent School District (the "district"), which you represent, received a request for any information in relation to a specified complaint, including any completed investigative reports; documents reflecting any disciplinary or corrective action taken against a named employee in regards to the specified complaint; information regarding any other complaints filed against the named employee; and information pertaining to the named employee's job performance. You state you have provided the requestor with some responsive information, with the exception of any protected by the Family Educational Rights and Privacy Act (FERPA), section 1232g of title 20 of the United States Code.¹ You claim the submitted information is excepted from disclosure under section 552.101 of the

¹The United States Department of Education Family Policy Compliance Office (the "DOE") has informed this office that FERPA does not permit state and local educational authorities to disclose to this office, without parental 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. We have posted a copy of the letter from the DOE to this office on the Attorney General's website: <http://www.oag.state.tx.us/open/20060725usdoe.pdf>.

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, such as section 21.355 of the Education Code. Section 21.355 provides "[a] document evaluating the performance of a teacher or administrator is confidential." Educ. Code § 21.355. In addition, the court 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." *North East Indep. Sch. Dist. v. Abbott*, 212 S.W.3d 364 (Tex. App.—Austin 2006, no pet.). 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 (1996). In that opinion, this office also concluded a teacher is someone who is required to hold and does hold a certificate required under chapter 21 of the Education Code and is teaching at the time of his or her evaluation. *Id.*

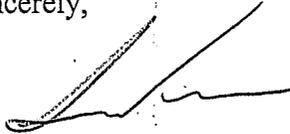
You represent the named district employee is a certified teacher who also serves as a district athletic coach. You have provided documentation showing the employee at issue held a teaching certificate under subchapter B of chapter 21 of the Education Code at the times of the evaluations. Upon review, we agree some of the submitted information constitutes teacher evaluations for purposes of section 21.355. Thus, this information must be withheld under section 552.101 in conjunction with section 21.355. However, some of the remaining documents, which we have marked, were completed by the district employee himself. In addition, you have failed to demonstrate how the remaining information, which we have marked, constitutes an evaluation as contemplated by section 21.355. *See* Educ. Code § 21.353 (teachers shall be appraised only on basis of classroom teaching performance and not in connection with extracurricular activities). Accordingly, the district may not withhold any of the information we marked under section 552.101 in conjunction with section 21.355. As you raise no further exceptions against the release of the marked information, it must be released.

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,



Ana Carolina Vieira
Assistant Attorney General
Open Records Division

ACV/eeg

Ref: ID# 381155

Enc. Submitted documents

c: Requestor
(w/o enclosures)