



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 7, 2010

Ms. Janet S. Bubert
Bracket & Ellis
100 Main Street
Fort Worth, Texas 76102-3090

OR2010-15300

Dear Ms. Bubert:

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# 395999.

The Hurst-Eules-Bedford Independent School District (the "district"), which you represent, received a request for several categories of information pertaining to a former district employee, district policies and procedures, and certain students. You state you will release some of the requested information to the requestor. You state the district has redacted student-identifying information pursuant to the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232g.¹ You also state the district has redacted the home addresses, telephone numbers, social security numbers, and family member information of certain current and former district employees, and provided notice to the requestor pursuant to

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 that 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>.

section 552.024(c-2) of the Government Code.² You claim 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 section encompasses information protected by other statutes, such as 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. 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 an administrator. *See* Open Records Decision No. 643 (1996). In that decision, we concluded a "teacher" for purposes of section 21.355 means a person who (1) is required to and does in fact hold a certificate or permit required under chapter 21 of the Education Code and (2) is teaching 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." *Id.* at 5.

You contend the submitted information is confidential under section 21.355 of the Education Code. You state this information consists of evaluations of the former district employee who was employed as a teacher at the time of the evaluations and who held the appropriate certificate. You indicate the former district employee was teaching at the time of the submitted evaluations. Upon review, we agree some of the submitted documents are evaluations of the former district 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. However, some of the remaining information consists of evaluations of the former district employee during her service as an intern. As stated above, this office has determined that interns are not teachers or administrators for purposes of section 21.355. *See* ORD 643 at 5. Furthermore, the remaining records consist of self-evaluation forms completed by the former district employee, documents regarding an investigation of alleged wrongdoing by the former district employee, and an Appraisal Waiver. We conclude these documents do not evaluate the former district employee for purposes of section 21.355 and, therefore, they may not be withheld under section 552.101 of the Government Code on that basis. As you make no further arguments against disclosure, the remaining information must be released.

²Section 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).

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,



Christina Alvarado
Assistant Attorney General
Open Records Division

CA/tp

Ref: ID# 395999

Enc. Submitted documents

c: Requestor
(w/o enclosures)