



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 22, 2010

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

OR2010-16061

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# 397635.

The Dripping Springs Independent School District (the "district"), which you represent, received a request for (1) records pertaining to the Community Education Department and Community Education Fund, (2) two named district employees' personnel and disciplinary records, and (3) e-mail correspondence between two other district employees, during a specified period.¹ You state that, upon payment from the requestor, you will release most of the requested information. You also state you have withheld some responsive information pursuant to the Family Educational Rights and Privacy Act ("FERPA") section 1232g of title 20 of the United States 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.

¹You state the district sought and received clarification from the requestor regarding this request. See Gov't Code § 552.222(b) (stating if information requested is unclear to governmental body or if large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used); see also *City of Dallas v. Abbott*, 304 S.W.3d 380, 384 (Tex. 2010) (where governmental body seeks clarification or narrowing of request for information, ten-day period to request attorney general opinion is measured from the date request is clarified or narrowed).

²The 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.state.tx.us/open/20060725usdoe.pdf>.

Initially, we note you only submitted portions of the personnel and disciplinary records requested in category two of the request. We assume the remainder of these employees' personnel and disciplinary records have been released to the requestor. Additionally, to the extent information responsive to the other two categories of the request existed when the district received the request for information, we assume you have released it to the requestor. If not, then you must do so at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

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 that "[a] document 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 (1996). In that decision, this office also concluded that 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.* 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.).

You raise section 21.355 for the information submitted in Exhibit 2. You state the employees at issue were employed as teachers, with supplemental coaching duties, at the time of the evaluations. You also provide documentation reflecting the time periods during which the employees at issue were certified as classroom teachers. Upon review, we agree most of the records in Exhibit 2 are teacher evaluations for purposes of section 21.355. Thus, most of this information must be withheld under section 552.101 in conjunction with section 21.355 of the Education Code. However, the remaining information in Exhibit 2 includes a reprimand and two intervention plans relating to the teachers' duties as coaches. You do not explain how these documents evaluate the employees based on their classroom teaching performance, 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); *see also* Gov't Code § 552.301(e)(1)(A) (governmental body must provide reasons why the stated exceptions apply). Therefore, these documents may not be withheld under section 552.101 in conjunction with section 21.355. Additionally, you do not provide documentation reflecting the teacher who was evaluated in the remaining evaluation held the proper teacher certification at the time of the evaluation. Thus, if this teacher held the proper certification, then the document we marked must be withheld under section 552.101 in conjunction with section 21.355. However, if this individual was not certified as a teacher at the time of this evaluation, then this document is not confidential under section 21.355 and must be released.

You raise section 552.102(b) of the Government Code for portions of the university transcripts submitted in Exhibit 3. Section 552.102(b) excepts from disclosure all information from transcripts of professional public school employees other than the employee's name, the courses taken, and the degree obtained. Gov't Code § 552.102(b); Open Records Decision No. 526 (1989). Thus, with the exception of the names, courses taken, and degrees obtained that must be released, the district must withhold the transcripts submitted in Exhibit 3 under section 552.102(b) of the Government Code.

In summary, the district must release the information we marked in Exhibit 2 related to teachers' duties as coaches. If the individual whose evaluation we marked in Exhibit 2 did not hold the proper teacher certification on the date of this evaluation, the district must also release this evaluation. The district must withhold the remaining information in Exhibit 2 under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code. With the exception of the names, courses taken, and degrees obtained that must be released, the district must withhold Exhibit 3 under section 552.102(b) of the Government 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 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,



Bob Davis
Assistant Attorney General
Open Records Division

RSD/tp

Ref: ID# 397635

Enc. Submitted documents

c: Requestor
(w/o enclosures)