



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 8, 2010

Mr. Ricardo R. Lopez
Rogers, Morris & Grover, L.L.P.
517 Soledad Street
San Antonio, Texas 78205-1508

OR2010-16912

Dear Mr. Lopez:

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# 399369.

The North East Independent School District (the "district"), which you represent, received a request for certain information pertaining to a former district principal for a specified time period. 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.

Initially, we note that a portion of the submitted information, which we have marked, is not responsive to the instant request as it is outside the time period specified in the request or does not pertain to the information requested. This ruling does not address the public availability of any information that is not responsive to the request, and the district is not required to release that information in response to the request.

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 assert that the responsive information is excepted from disclosure under 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. 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 addition, the court has concluded that 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

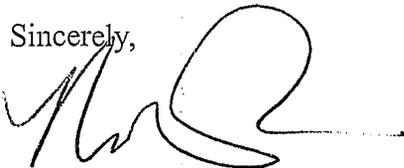
S.W.3d 364 (Tex. App.—Austin 2006, no pet.). We have determined that the word “administrator” in section 21.355 means a person who is required to and does in fact hold an administrator’s certificate under chapter 21 of the Education Code and is performing the functions of an administrator, as that term is commonly defined, at the time of the evaluation. See ORD 643.

You assert the responsive information consists of evaluations of the former district principal, including letters of counseling and reprimand. You do not indicate whether the individual at issue held an administrator’s certificate under chapter 21 of the Education Code and was performing the functions of an administrator at the time of the respective evaluations. Therefore we must rule conditionally. To the extent the individual in question held an administrator’s certificate and was functioning as an administrator at the time of the evaluations, the district must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code. To the extent the individual in question did not hold an administrator’s certificate or was not functioning as an administrator at the time of the evaluations, the marked information is not confidential under section 21.355 of the Education Code and may not be withheld under section 552.101 of the Government Code. Further, we conclude that the remaining information, which consists of a directive to the former district principal from the associate superintendent, does not evaluate the employee for purposes of section 21.355. Accordingly, none of the remaining information may be withheld under section 552.101 in conjunction with section 21.355 of the Education Code. As you raise no further exceptions to disclosure for this 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,



Nneka Kanu
Assistant Attorney General
Open Records Division

NK/em

Ref: ID# 399369

Enc. Submitted documents

cc: Requestor
(w/o enclosures)