



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 21, 2010

Mr. Humberto Aguilera
Escamilla, Poneck & Cruz, LLP
P.O. Box 200
San Antonio, Texas 78291

OR2010-19228

Dear Mr. Aguilera:

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# 404566.

The San Antonio Independent School District (the "district"), which you represent, received a request for the district's rules governing its employees' use of computers and all written warnings and disciplinary actions taken against district employees in 2010. You state the district has released some responsive documents to the requestor. You claim the remaining responsive 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 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. In Open Records Decision No. 643 (1996), we determined 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 or a school district teaching permit under section 21.055, and who is engaged in the process of teaching, as that term is

commonly defined, at the time of the evaluation. *See* ORD 643 at 4. The Third Court of Appeals has concluded that a written reprimand constitutes an evaluation for the purposes of section 21.355 where "it reflects the principal's judgment regarding [a teacher's] actions, gives corrective direction, and provides for further review." *Abbott v. North East Indep. Sch. Dist.*, 212 S.W.3d 364 (Tex. App.—Austin 2006, no pet.).

You inform this office the employee whose is reprimanded in the document submitted in Exhibits A is a teacher who was required to hold, and did hold, a teaching certificate under subchapter B of chapter 21 at the time of this reprimand. You also state, and the document reflects, this individual was engaged in teaching at the time of the reprimand. Upon review of this reprimand, we agree it evaluates this teacher for purposes of section 21.355. *See id.* Thus, Exhibit A must be withheld under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code. Although you also assert the reprimand in Exhibit B is confidential under section 21.355, you acknowledge the individual whose conduct is at issue in this document was not certified as a teacher at the time of the evaluation. You claim because this document indirectly reveals information about the conduct of a certified teacher, it should be afforded confidentiality under section 21.355. However, upon review, the reprimand in Exhibit B does not evaluate the conduct of the individual who is indirectly referenced in the document. Thus, because this document only evaluates the conduct of an individual who was not licensed at the time of the evaluation, we find section 21.355 is inapplicable to Exhibit B. *See* Open Records Decision Nos. 658 at 4 (1998) (statutory confidentiality must be express, and confidentiality requirement will not be implied from statutory structure); 478 at 2-3 (1987).

Section 552.101 of the Government Code also encompasses common-law privacy, which protects information that: (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. You claim Exhibit C is confidential pursuant to common-law privacy. The information in Exhibit C pertains to a district investigation of potentially inappropriate work conduct by a district librarian. As this office has often stated, information pertaining to the work conduct and job performance of public employees is subject to a legitimate public interest and is, therefore, generally not protected from disclosure under common-law privacy. *See, e.g.,* Open Records Decision Nos. 470 at 4 (1987) (public has legitimate interest in job qualifications and performance of public employees), 455 (1987) (public employee's job performance or abilities generally not protected by privacy), 444 at 3 (1986) (public has obvious interest in information concerning qualifications and performance of governmental employees), 423 at 2 (1984) (scope of public employee privacy is narrow), 405 at 2 (1983) (manner in which public employee's job was performed cannot be said to be of minimal public interest). Thus, because the information in Exhibit C is of legitimate public interest, it may not be withheld under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, the district must withhold Exhibit A under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code. The remaining submitted information 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,



Bob Davis
Assistant Attorney General
Open Records Division

RSD/tf

Ref: ID# 404566

Enc. Submitted documents

c: Requestor
(w/o enclosures)