



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 28, 2011

Mr. S. Anthony Safi  
Mounce, Green, Myers, Safi,  
Paxson & Galatzan  
P.O. Box 1977  
El Paso, Texas 79950-1977

OR2011-04201

Dear Mr. Safi:

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# 412503.

The El Paso Independent School District (the "district"), which you represent, received a request for records related to a named former employee. You state the district has released some of the requested information. You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.102 of the Government Code. You also state you have informed an interested party of this request and of the right to submit arguments to this office as to why the requested information should not be released. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). We have considered the exceptions you claim and reviewed the submitted information. We have also considered the comments of the interested party. *See id.*

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. 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.* 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 claim the submitted information consists of a written reprimand and a resignation letter that constitute teacher evaluations. You state the submitted information relates to a teacher who held the appropriate teaching certificate and was teaching at the time of the evaluations. Based on your representations and our review, we agree that the written reprimand, which we have marked, is a teacher evaluation subject to section 21.355. However, we conclude that the resignation letter does not evaluate the employee for purposes of section 21.355. Accordingly, the district must withhold the information we have marked under section 552.101 in conjunction with section 21.355 of the Education Code.

You claim the remaining information is excepted from disclosure under section 552.102 of the Government Code. Section 552.102(a) excepts from disclosure “information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.” Gov’t Code § 552.102(a). On review, we conclude none of the remaining information is excepted under section 552.102(a) of the Government Code. Accordingly, none of the remaining information may be withheld on that basis.

The interested party asserts that Texas Rule of Evidence 509 is applicable to the remaining information. Texas Rule of Evidence 509 provides that confidential communications between a physician and patient, as well as a physician’s records of the identity, diagnosis, evaluation, or treatment of a patient, are privileged in a civil proceeding and protected from discovery. TEX. R. EVID. 509(c). The interested party asserts the remaining information is privileged under rule 509. However, she has not demonstrated that any of the remaining information constitutes confidential communications between a physician and a patient, or is a record of the identity, diagnosis, evaluation, or treatment of a patient. Therefore, the district may not withhold any of the remaining information on the basis of Texas Rule of Evidence 509.

However, some of the remaining information is subject to section 552.101 of the Government Code in conjunction with common-law privacy. Section 552.101 also encompasses the common-law right of privacy, which protects information if it (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. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The types of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* include information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. In addition, this office has found that some kinds

of medical information or information indicating disabilities or specific illnesses are excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). Upon review, we find the information we have marked is highly intimate or embarrassing and not of legitimate public interest. The district must withhold the marked information under section 552.101 in conjunction with common-law privacy.

In summary, the district must withhold the information we have marked under section 552.101 of the Government Code in conjunction with 21.355 of the Education Code. The district must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The remaining 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](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,



Andrea L. Caldwell  
Assistant Attorney General  
Open Records Division

ALC/eeg

Ref: ID# 412503

Enc. Submitted documents

c: Requestor  
(w/o enclosures)