



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 16, 2011

Ms. LeAnne Lundy
Rogers, Morris & Grover, L.L.P.
5718 Westheimer Road, Suite 1200
Houston, Texas 77057

OR2011-08538

Dear Ms. Lundy:

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# 420983.

The Klein Independent School District (the "district"), which you represent, received a request for documents pertaining to the separation from employment between a named employee and the district as well as documents relating to the performance of the named employee.¹ You provide documentation reflecting some information has been released. 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 exception encompasses information other statutes make confidential. You raise 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. In Open Records Decision No. 643 (1996), this office

¹You inform us the district requested and received clarification from the requestor regarding the 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).

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* ORD 643 at 3. In that opinion, this office also concluded a teacher is someone who is required to hold and does hold a certificate or permit required under chapter 21 of the Education Code and is teaching at the time of his or her evaluation. *Id.* We note the Third Court of Appeals has concluded that a written reprimand constitutes an evaluation for the 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.” *Abbott v. North East Indep. Sch. Dist.*, 212 S.W.3d 364 (Tex. App.—Austin 2006, no pet.).

You contend the submitted information constitutes confidential evaluations of the named employee, who was a program coordinator for the district. You inform us the program coordinator was a certified teacher who held the appropriate certification at the time the evaluations were prepared. Upon review of the information at issue, we conclude some of the information, which we have marked, is confidential under section 21.355 of the Education Code and must be withheld under section 552.101 of the Government Code on that basis. However, we find you have failed to demonstrate how the remaining information constitutes evaluations for purposes of section 21.355 of the Education Code. Accordingly, the remaining information may not be withheld under section 552.101 on that basis.

We note the information at issue contains a personal e-mail address. Section 552.137 of the Government Code excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body,” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c).² *See* Gov’t Code § 552.137(a)-(c). The e-mail address at issue is not specifically excluded by section 552.137(c). As such, the district must withhold this e-mail address, which we have marked, under section 552.137, unless the named employee affirmatively consents to its release.³ *See id.* § 552.137(b).

In summary, 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. The district must also withhold the e-mail address we have marked under section 552.137 of the Government Code, unless the named employee affirmatively consents to its release. The remaining information must be released.

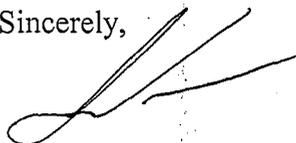
²The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

³Open Records Decision No. 684 (2009) serves as a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including e-mail addresses of members of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

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,



Ana Carolina Vieira
Assistant Attorney General
Open Records Division

ACV/bs

Ref: ID# 420983

Enc. Submitted documents

c: Requestor
(w/o enclosures)