



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 17, 2011

Mr. Humberto Aguilera
For San Antonio Independent School District
Escamilla, Poneck & Cruz, L.L.P.
P.O. Box 200
San Antonio, Texas 78291-0200

OR2011-08627

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# 420928.

The San Antonio Independent School District (the "district"), which you represent, received a request for five categories of information pertaining to the district's dress code policy and seven categories of information related to Sam Houston High School. 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.

We begin by noting that some of the submitted records, which we have marked, are not responsive to the instant request for information, as they do not pertain to the district's dress code policy or to Sam Houston High School. This ruling does not address the public availability of any information that is not responsive to the request, and the district need not release that information in response to this 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. 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 contend that the information at issue is confidential under section 21.355. You state that the employees concerned were teachers who held the appropriate teaching certificate and assert the employees were teaching at the time the information was created. We note the documents at issue consist of employee logs and policy/procedure memoranda pertaining to the district dress code. Upon review, we find that you have failed to demonstrate how any of the information at issue consists of “[a] document evaluating the performance of a teacher or administrator” as contemplated by section 21.355. Educ. Code § 21.355. Accordingly, we conclude the district may not withhold the information at issue based on section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code. As you raise no other exception to disclosure of this information, the submitted responsive information must be released to the requestor.

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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/dls

Ref: ID# 420928

Enc. Submitted documents

c: Requestor.
(w/o enclosures)