



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 7, 2011

Mr. Michael Salinas
Attorney at Law
302A West Third Street
Mercedes, Texas 78570

OR2011-14616

Dear Mr. Salinas:

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# 433000.

The Mercedes Independent School District (the "district"), which you represent, received a request for (1) all complaint forms; (2) all statements taken by Mercedes High School administrators from students regarding a certain complaint; (3) the Mercedes High School Level One complaint recommendations concerning a named district employee written by a named individual; (4) the named district employee's personnel file; (5) any and all documents relating to the requestor's son's complaint against the named district employee; and (6) the contact information for the district's attorney. You state you will release some of the requested information. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.102 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

The United States Department of Education Family Policy Compliance Office (the "DOE") has informed this office that the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. §1232(a), does not permit state and local educational authorities to disclose to this office, without parental or an adult student's consent, unredacted, personally identifiable information contained in education records for the purpose of our review in the open records ruling process under the Act.² Consequently, state and local educational authorities that receive a request for education records from a member of the public under the Act must not submit education records to this office in unredacted form, that is, in a form in which

¹Although you additionally assert section 552.026, we note that this section is not an exception to disclosure under the Act. Rather, section 552.026 provides that the Act does not require the release of information contained in education records except in conformity with FERPA. Gov't Code § 552.026.

²A copy of this letter may be found on the Office of the Attorney General's website at <http://www.oag.state.tx.us/open/20060725usdoe.pdf>.

“personally identifiable information” is disclosed. *See* 34 C.F.R. § 99.3 (defining “personally identifiable information”). You have submitted redacted handwritten student statements to this office for our review. *See* Open Records Decision No. 224 (1979) (student’s handwritten comments protected under FERPA because they would make identity of student easily traceable through handwriting, style of expression, or particular incidents related in the comments). Because our office is prohibited from reviewing these education records to determine whether appropriate redactions under FERPA have been made, we will not address the applicability of FERPA to the submitted information. Such determinations under FERPA must be made by the educational authority in possession of the education records. We will, however, address the applicability of sections 552.101 and 552.102 of the Government Code to 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 made confidential by other statutes, such as section 21.355 of the Education Code, which provides that “[a] document evaluating the performance of a teacher or administrator is confidential.” Act of May 25, 2011, 82nd Leg., R.S., H.B. 2971, § 1 (to be codified at 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 Open Records Decision No. 643, we determined for the purposes of section 21.355, the word “teacher” means a person who is required to, and does in fact, 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.*

You contend the submitted professional development and appraisal system forms and the professional development and support teacher self-report forms are confidential under section 21.355. You do not inform us, however, whether the named district employee held a teacher’s certificate under chapter 21 of the Education Code and was performing the functions of a teacher when the information at issue was created. Therefore, we must rule conditionally. Thus, we conclude the district may withhold the submitted professional development and appraisal system forms, which 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 named district employee held the appropriate teacher’s certificate under chapter 21 of the Education Code and was functioning as a teacher at the time the marked information was created. However, to the extent the named district employee did not hold the appropriate teacher’s certificate under chapter 21 or was not functioning as a teacher at the time the marked information was created, we conclude this information is not confidential under section 21.355 and may not be withheld under section 552.101 on that basis. Additionally, we find you have not established how the professional development and support teacher self-report forms constitute evaluations of a teacher’s performance as contemplated by section 21.355. Accordingly, the district may not withhold the teacher self-report forms under section 552.101 on that basis.

You seek to withhold the submitted college transcripts under section 552.102 of the Government Code. Section 552.102(b) of the Government Code excepts from public

disclosure “a transcript from an institution of higher education maintained in the personnel file of a professional public school employee[.]” Gov’t Code § 552.102(b). This exception further provides, however, “the degree obtained or the curriculum on a transcript in the personnel file of the employee” are not excepted from disclosure. *Id.*; *see also* Open Records Decision No. 526 (1989). Thus, with the exception of the employee’s name, courses taken, and degree obtained, the district must withhold the submitted college transcripts under section 552.102(b) of the Government Code.

In summary, this ruling does not address the applicability of FERPA to the submitted information. To the extent the named district employee held a teacher’s certificate and was functioning as a teacher at the time the professional development and appraisal system forms were created, the district must withhold this information, which we have marked, under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code. With the exception of the employee’s name, courses taken, and degree obtained, the district must withhold the submitted college transcripts under section 552.102(b) of the Government Code. 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, 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,



Kirsten Brew
Assistant Attorney General
Open Records Division

KB/em

Ref: ID# 433000

Enc. Submitted documents

c: Requestor
(w/o enclosures)