



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 14, 2011

Mr. S. Anthony Safi  
For El Paso Independent School District  
Mounce, Green, Myers, Safi, Paxson & Galatzan  
P.O. Box 1977  
El Paso, Texas 79999-1977

OR2011-14937

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# 433058 (EPISD ORR# 2011.248).

The El Paso Independent School District (the "district") received a request for all records pertaining to a named assistant principal. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code.<sup>1</sup> You indicate you have notified the named assistant principal of the request. *See* Gov't Code § 552.304 (interested party may submit comments to this office stating why the information at issue should or should not be released). We have considered the exception you claim and reviewed the submitted information.

Initially, we note the requestor seeks all documents pertaining to the named assistant principal, including several specified categories of information. We note you have provided only information concerning the requested employment appraisals. To the extent information responsive to the remainder of the request existed on the date the district received the request, we presume the district has released it. If not, the district must do so at this time.

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<sup>1</sup>Although you raise section 552.102 of the Government Code, you have not submitted arguments in support of that exception; therefore, we assume you have withdrawn it. *See* Gov't Code §§ 552.301, .302.

*See* Gov't Code §§ 552.301, .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to the requested information, it must release the information as soon as possible).

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” This section encompasses 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(a)). Additionally, the Third Court of Appeals has concluded a written reprimand constitutes an evaluation for purposes of section 21.355 as 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.). 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 administrator. *See* Open Records Decision No. 643 at 3 (1996). We also determined a “teacher” or “administrator” for purposes of section 21.355 means a person who is required to and does in fact hold a certificate or permit under chapter 21 of the Education Code and is teaching or performing the functions of an administrator at the time of the evaluation. *See id.* at 4.

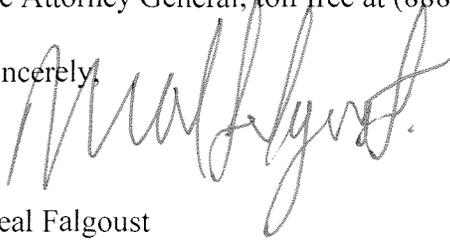
You state the submitted information constitutes evaluations of the named assistant principal. You state this employee was required to hold, and did hold, an appropriate teaching certificate and was teaching from 2000 to 2004. You also state this employee was required to hold, and did hold, an appropriate administrator’s certificate and was performing the functions of an administrator from 2006 until the present. Based on these representations and our review of the submitted information, we conclude 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. However, upon further review, we find the remaining information does not constitute an evaluation for purposes of section 21.355 of the Education Code, and it may not be withheld under section 552.101 of the Government Code on that basis. Thus, 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,

A handwritten signature in black ink, appearing to read 'Neal Falgoust', written over the word 'Sincerely,'.

Neal Falgoust  
Assistant Attorney General  
Open Records Division

NF/agn

Ref: ID# 433058

Enc. Submitted documents

c: Requestor  
(w/o enclosures)