



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 14, 2011

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

OR2011-16713

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# 435917 (EPISD ORR #2011.311).

The El Paso Independent School District (the "district"), which you represent, received a request for information involving a specified incident, a named student, and a specified time period. You state the district is redacting student-identifying information from some of the responsive records pursuant to the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code.<sup>1</sup> You also state the district is redacting information relating to one of its employees pursuant to section 552.024(c) of the Government Code.<sup>2</sup> You inform us the redacted records are being released. You claim the submitted information is excepted from disclosure under section 552.101 of the Government

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<sup>1</sup>The United States Department of Education Family Policy Compliance Office (the "DOE") has informed this office FERPA does not permit state and local educational authorities to disclose to this office, without parental consent, unredacted, personally identifiable information contained in education records for the purpose of our review in the open records ruling process under the Act. The DOE has determined FERPA determinations must be made by the educational authority in possession of the education records. A copy of the DOE's letter to this office is posted on the Attorney General's website at: <http://www.oag.state.tx.us/open/20060725usdoe.pdf>.

<sup>2</sup>Section 552.024(c) of the Government Code authorizes a governmental body to redact information protected by section 552.117(a)(1) of the Government Code without the necessity of requesting a decision under the Act if the current or former employee to whom the information pertains timely chooses not to allow public access to the information. *See* Gov't Code § 552.024(c)(2).

Code. We have considered the exception you claim and reviewed the information you submitted.<sup>3</sup>

You also inform us the district will redact information under section 552.102 of the Government Code from the records to be released.<sup>4</sup> We note a governmental body may not withhold information from the public without asking this office for a decision under section 552.301 of the Government Code unless a provision of the Act or a previous determination specifically authorizes the governmental body to do so. *See* Gov't Code § 552.301(a); *see also, e.g., id.* §§ 552.024(c), .147; Open Records Decision No. 673 (2001) (previous determinations). We are unaware of any statutory or other authority that would permit the district to withhold information under section 552.102 without asking this office for a decision. Therefore, the district may not redact any information from the records to be released on the basis of section 552.102 without asking this office for a ruling under section 552.301. We note section 552.102 is a confidentiality provision and may not be waived. *See* Gov't Code § 552.007. We also note the Act prescribes criminal penalties for the release of confidential information. *See id.* § 552.352.

We next note some of the submitted information is not related to the incident specified in the present request for information or any other incident that occurred within the time period specified in the request. Thus, that information, which we have marked, is not responsive to the request. This decision does not address the public availability of information that is not responsive to the request, and the district need not release that information in response to the request.

You claim the submitted responsive information is confidential under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code. Section 552.101 excepts “information considered to be confidential by law, either constitutional, statutory, or by judicial decision,” *id.* § 552.101, and encompasses information other statutes make confidential. Section 21.355 of the Education Code provides in part that “[a] document evaluating the performance of a teacher or administrator is confidential.” *See* Act of May 25, 2011, 82<sup>nd</sup> Leg., R.S., H.B. 2971, § 1 (to be codified at Educ. Code § 21.355(a)). 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). We also have determined that

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<sup>3</sup>You also inform us the district notified the named teacher of this request for information and of his right to submit comments to the attorney general stating reasons why the requested information should or should not be released. *See* Gov't Code § 552.304. As of the date of this ruling, the teacher has submitted no comments to this office.

<sup>4</sup>Section 552.102 excepts from disclosure “information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy” and “a transcript from an institution of higher education maintained in the personnel file of a professional public school employee,” except for the degree obtained or the curriculum. Gov't Code § 552.102(a)-(b). The Texas Supreme Court has held section 552.102(a) excepts from disclosure the dates of birth of state employees in the payroll database of the Texas Comptroller of Public Accounts. *See Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex.*, No. 08-0172, 2010 WL 4910163 (Tex. Dec. 3, 2010).

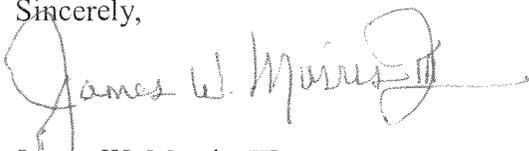
“teacher,” for purposes of section 21.355, means a person who is required to and does in fact hold a teaching certificate under subchapter B of chapter 21 of the Education Code or a school district teaching permit under section 21.055 and who is engaged in the process of teaching, as that term is commonly defined, at the time of the evaluation. *See* ORD 643 at 4. The Third Court of Appeals has concluded 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.” *See North East Indep. Sch. Dist. v. Abbott*, 212 S.W.3d 364 (Tex. App.—Austin 2006, no pet.).

You contend the responsive information evaluates the performance of a teacher for purposes of section 21.355. You state the information at issue pertains to an employee who was required to and did hold the appropriate certification and was functioning as a teacher during the relevant time period. Based on your representations and our review, we agree the responsive information is confidential under section 21.355 of the Education Code. We therefore conclude the district must withhold the responsive information on that basis under section 552.101 of the Government Code.

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,



James W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/em

Ref: ID# 435917

Enc: Submitted documents

c: Requestor  
(w/o enclosures)