



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 16, 2011

Ms. Elisabeth D. Nelson
For Lewisville Independent School District
Law Offices of Robert E. Luna, P.C.
4411 North Central Expressway
Dallas, Texas 75205

OR2011-18524

Dear Ms. Nelson:

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# 440376.

The Lewisville Independent School District (the "district"), which you represent, received a request for information related to any district investigation of any of three named individuals, any complaints filed by a parent of a varsity or sub-varsity football player against a named individual, correspondence between two named individuals during a specified time period regarding Flower Mound Marcus football or football players, correspondence between two named individuals during a specified time period regarding Flower Mound Marcus football or football players or a third named individual, and evaluations of a named individual during a specified time period. You state you have released some information to the requestor. You claim the submitted information is excepted from disclosure pursuant to section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

We first note, and you acknowledge, the district did not comply with section 552.301 of the Government Code in requesting this decision. *See* Gov't Code § 552.301(a)-(b), (e) (prescribing deadlines for governmental body's request for attorney general's decision). Pursuant to section 552.302 of the Government Code, the submitted information is therefore presumed to be subject to required public disclosure and must be released, unless there is a

compelling reason to withhold any of the information. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ). This statutory presumption can generally be overcome when information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). Because your claim under section 552.101 of the Government Code can provide a compelling reason for non-disclosure, we will consider your argument under this exception.

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, such as section 21.355 of the Education Code. Section 21.355 provides “[a] document evaluating the performance of a teacher or administrator is confidential.” Educ. Code § 21.355(a). 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. Open Records Decision No. 643 (1996). We have determined that 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 id.* at 4.

You contend the submitted evaluations of the Campus Athletic Coordinator/Head Football Coach are made confidential by section 21.355. You state the Campus Athletic Coordinator was required to hold and did hold the appropriate classroom teacher certification at the time of the evaluations. However, you state “this individual is not a teacher with supplemental teaching duties; he is employed as a Campus Athletic Coordinator/Head Football Coach.” Upon review, the evaluations relate to the named employee’s duties as a coach. You have not explained how this information evaluates the employee’s teaching performance as contemplated by section 21.355 of the Education Code. *See* Educ. Code § 21.353 (teachers shall be appraised only on basis of classroom teaching performance and not in connection with extracurricular activities). Thus, the submitted evaluations may not be withheld under section 552.101 in conjunction with section 21.355. As you raise no further exceptions to disclosure, the submitted 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,

A handwritten signature in cursive script, appearing to read "Jennifer Burnett", with a horizontal line extending to the right.

Jennifer Burnett
Assistant Attorney General
Open Records Division

JB/dls

Ref: ID# 440376

Enc. Submitted documents

c: Requestor
(w/o enclosures)