



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 12, 2012

Ms. Bertha Bailey Whatley
Chief Legal Counsel and Public Information Designee
Fort Worth Independent School District
100 North University Drive SW, Suite 172
Fort Worth, Texas 76107

OR2012-03638

Dear Ms. Whatley:

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# 447452.

The Fort Worth Independent School District (the "district") received two requests for information pertaining to a named district principal, including his personnel file, job application, evaluations, his contract with the district, any complaints or grievances filed against him, reports by the Office of Professional Standards, or emails sent to the Office of Professional Standards regarding the principal since October 1, 2011. We note you have redacted a social security number pursuant to section 552.147 of the Government Code.¹ You raise sections 552.101, 552.102, and 552.135 of the Government Code.² We have considered the exceptions you claim and reviewed the submitted information, a portion of which you state is a representative sample.³

¹Section 552.147(b) of the Government Code permits a governmental body to withhold the social security number of a living person without the necessity of seeking a decision from this office. Gov't Code § 552.147(b).

²Although you also raise section 552.305 of the Government Code, we note section 552.305 is not an exception to public disclosure under the Act. *See* Gov't Code § 552.305. Rather, this section addresses the procedural requirements for notifying third parties their interests may be affected by a request for information. *See id.*

³We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

Initially, we note you have only submitted evaluations, a copy of the principal's contract with the district, and a letter from the principal referencing a possible complaint or grievance. You have not submitted for our review any information responsive to the request for the principal's job application, actual complaints or grievances filed against the principal, reports by the Office of Professional Standards, or emails sent to that office regarding the named principal. Although you state the district submitted a representative sample of information, no portion of the submitted representative sample pertains to the above-referenced categories of information. Thus, we find the submitted information is not representative of the information sought in these parts of the request. Please be advised this open records letter applies to only the types of information you have submitted for our review. Therefore, this letter ruling does not authorize the withholding of any other requested records to the extent those records contain substantially different types of information than that submitted to this office. *See* Gov't Code § 552.302 (where request for attorney general decision does not comply with requirements of section 552.301, information at issue is presumed to be public). To the extent records responsive to the remaining categories of requested information existed when the request was received, we assume you have released them. If you have not released any such information, you must do so at this time. *See id.* §§ 552.301, .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

We further note that you have submitted information that was created after the district received both requests and emails that pertain to a teacher not named in either request. This information, which we have marked, is not responsive to either request. Our ruling does not address the public availability of information that is not responsive, and the district is not required to release non-responsive information. Because we find that this information is not responsive to the requests, we need not address your arguments against disclosure of this information.

Section 552.101 of the Government Code exempts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 of the Government Code encompasses 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(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). Additionally, the Third Court of Appeals has concluded that 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.). In Open Records Decision No. 643, we determined a "teacher" or "administrator" for purposes of section 21.355 means a person who (1) is required to and does in fact hold a certificate or permit required under chapter 21 of the Education Code and

(2) is teaching or performing the functions of an administrator at the time of his or her evaluation. *Id.*

You assert that the information at issue consists of written evaluations that are confidential under section 21.355. We note the submitted information reflects that the principal at issue held the appropriate certification at the time of the evaluations. Based on your representations and our review, we find that some of the documents, which we have marked, constitute evaluations as contemplated by section 21.355. Accordingly, the district must withhold the documents we have marked under section 552.101 in conjunction with section 21.355 of the Education Code. However, we find that the remaining document, the letter written by the principal in response to an allegation of misconduct, is not an evaluation as that term is commonly understood. Thus, the district may not withhold this document under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code.

In summary, 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. The remaining responsive 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,



Jeffrey W. Giles
Assistant Attorney General
Open Records Division

JWG/dls

Ref: ID# 447452

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)