



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 3, 2012

Ms. Kelli H. Karczewski
Karczewski Bradshaw, L.L.P.
315 North Church
Nacogdoches, Texas 75961

OR2012-04758

Dear Ms. Karczewski:

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# 450739.

The Woden Independent School District (the "district"), which you represent, received a request for forty-nine categories of information related to a named teacher and another request from the same requestor for six categories of information related to sporting events. You indicate the district does not have some of the requested information.¹ You state the district will make some of the requested information available to the requestor upon payment, but claim some of the submitted information is excepted from disclosure under sections 552.101 and 552.102 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.²

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

¹The Act does not require a governmental body to disclose information that did not exist when the request for information was received. *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. App.—San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986).

²We 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.

section encompasses information protected by other statutes, including section 21.355 of the Education Code. Section 21.355(a) provides “[a] document evaluating the performance of a teacher or administrator is confidential.” 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.” *N.E. 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. *See* Open Records Decision No. 643 at 3 (1996). We also determined a “teacher” for purposes of section 21.355 means a person who (1) 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 (2) is engaged in the process of teaching, as that term is commonly defined, at the time of the evaluation. *See id.* at 4.

You assert Exhibit D consists of an evaluation of the performance of a teacher who held the appropriate certificate for the purpose of section 21.355 at the time of the evaluation. Upon review, we agree this evaluation is confidential under section 21.355. Therefore, the district must withhold Exhibit D under section 552.101 of the Government Code in conjunction with section 21.355.

Section 552.102(b) of the Government Code excepts from 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, that “the degree obtained or the curriculum on a transcript in the personnel file of the employee” is not excepted from disclosure. *Id.* Exhibit E consists of a transcript of the teacher at issue and a related transcript evaluation document. With the exception of the information that reveals the teacher’s name, degree obtained, and courses taken, the district must withhold the submitted transcript, which we have marked, in its entirety under section 552.102(b) in Exhibit E. *See* Open Records Decision No. 526 (1989) (addressing statutory predecessor). However, upon review, we find you have not established the transcript evaluation document consists of a transcript for purposes of section 552.102(b), and the district may not withhold it from release on that ground.

To conclude, the district must withhold Exhibit D under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code. With the exception of the information that reveals the teacher’s name, degree obtained, and courses taken, the district must withhold the transcript we have marked under section 552.102(b) of the Government Code. The district must release the remaining information.

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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/ag

Ref: ID# 450739

Enc. Submitted documents

c: Requestor
(w/o enclosures)