



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 13, 2012

Ms. Lucie S. Tredennick  
Thompson & Horton LLP  
Phoenix Tower, Suite 2000  
3200 Southwest Freeway  
Houston, Texas 77027

OR2012-05340

Dear Ms. Treddenick:

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# 450578.

The Deer Park Independent School District (the "district"), which you represent, received a request for a specified investigation of abuse involving a named teacher, contracts for the 2011-2012 school year for two named teachers, and their disciplinary files. You state some information, including the requested contracts, has been released to the requestor. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note the district has redacted student names in exhibits 1 and 2. The United States Department of Education Family Policy Compliance Office has informed this office that the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code, does not permit state and local educational authorities to disclose to this office, without parental or an adult student's consent, unredacted, personally identifiable information contained in education records for the purpose of our review in the open records ruling process under the Act.<sup>1</sup> Consequently, state and local educational authorities that receive a request for education records from a member of the public under the Act must not

---

<sup>1</sup>A copy of this letter may be found on the Office of the Attorney General's website at <http://www.oag.state.tx.us/open/20060725usdoe.pdf>.

submit education records to this office in unredacted form, that is, in a form in which “personally identifiable information” is disclosed. *See* 34 C.F.R. § 99.3 (defining “personally identifiable information”). However, FERPA is not applicable to law enforcement records maintained by the district’s police department for law enforcement purposes. *See* 20 U.S.C. § 1232g(a)(4)(B)(ii); 34 C.F.R. §§ 99.3, .8. In this instance, you have submitted redacted records for our review. Because our office is prohibited from reviewing these records to determine whether appropriate redactions under FERPA have been made, we will not address the applicability of FERPA to any of the submitted information, other than to note parents and their legal representatives have a right of access to their own child’s education records. *See* 20 U.S.C. § 1232g(a)(1)(A); 34 C.F.R. § 99.3. Such determinations under FERPA must be made by the educational authority in possession of the education records.<sup>2</sup>

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. Section 552.101 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, a court 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 concluded that a “teacher” 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 at the time of his or her evaluation. *Id.*

You seek to withhold the information in exhibit 1 on the basis of section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code. You inform us the two people who are the subjects of the information are both currently teachers of the district and hold teaching certificates. You state a portion of exhibit 1 consists of reprimand letters. Based on your representations and our review, we agree some of the documents, which we have marked, constitute evaluations as contemplated by section 21.355 of the Education Code. 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, the remaining information in exhibit 1 consists of witness statements regarding the specified incident and a summary of an internal investigation regarding the incident. These statements and summary do not constitute evaluations of the performance of an administrator or teacher for the purposes of section 21.355. Accordingly, the district may not withhold any of the

---

<sup>2</sup>In the future, if the district does obtain parental or an adult student’s consent to submit unredacted education records and the district seeks a ruling from this office on the proper redaction of those education records in compliance with FERPA, we will rule accordingly.

remaining information in exhibit 1 on the basis of section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code.

Section 552.101 also encompasses section 261.201(a) of the Family Code, which provides as follows:

(a) Except as provided by Section 261.203, the following information is confidential, is not subject to public release under [the Act], and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

- (1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and
- 2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201(a); *see also id.* §§ 101.003(a) (defining “child” for purposes of this section as person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes), 261.001(1), (4) (defining “abuse” and “neglect” for purposes of Family Code ch. 261). We note the district is not an agency authorized to conduct an investigation under chapter 261 of the Family Code. *See id.* § 261.103 (listing agencies that may conduct child abuse investigations). You state exhibit 2 consists of a report developed in an investigation of alleged child abuse under chapter 261 of the Family Code after a report of alleged abuse was made to Child Protective Services. You state the district received this report from the Pasadena Police Department, which is an agency authorized to conduct investigations under chapter 261. Upon review, we find you have demonstrated exhibit 2 constitutes a report used or developed in an investigation under chapter 261. Therefore, exhibit 2 is confidential under section 261.201(a) of the Family Code and must be withheld under section 552.101 of the Government Code.

In summary, the district must withhold the information we have marked in exhibit 1 under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code. The district must withhold exhibit 2 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. The remaining information in exhibit 1 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 cursive script that reads "Jessica Marsh".

Jessica Marsh  
Assistant Attorney General  
Open Records Division

JM/em

Ref: ID# 450578

Enc. Submitted documents

c: Requestor  
(w/o enclosures)