



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 1, 2012

Ms. Sarah Weber Langlois  
Counsel for the North Forest Independent School District  
Rogers, Morris & Grover, L.L.P.  
5718 Westhiemer Road, Suite 1200  
Houston, Texas 77057

OR2012-12017

Dear Ms. Langlois:

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# 460861.

The North Forest Independent School District (the "district"), which you represent, received a request for twenty categories of information pertaining to the complete educational record of a named student during a specified time period. A second request from the same requestor seeks thirty-six categories of information pertaining to bullying and harassment in the district, treatment of children with disabilities, the district's grievance procedures, and the district's insurance information, during specified time periods.<sup>1</sup> You state the district will release most of the requested information. You claim the submitted information is excepted from disclosure under sections 552.101, 552.102, and 552.136 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>2</sup>

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<sup>1</sup>You state the district sought clarification of the information requested. *See* Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request).

<sup>2</sup>We 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.

Next, we note the United States Department of Education Family Policy Compliance Office has informed this office 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>3</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 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”). You have submitted education records for our review in which some information is redacted and some information is unredacted. Because our office is prohibited from reviewing these education records to determine whether appropriate redactions under FERPA have been made, we will not address the applicability of FERPA to any of the submitted records, except to note the requestor has a right of access under FERPA to his client’s child’s education records. *See* 20 U.S.C. § 1232g(a)(1)(A); 34 C.F.R. § 99.3; *see also Equal Employment Opportunity Comm’n v. City of Orange, Tex.*, 905 F. Supp. 381, 382 (E.D. Tex. 1995) (holding FERPA prevails over inconsistent provision of state law). Such determinations under FERPA must be made by the educational authority in possession of the education records.

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 section encompasses information protected by section 21.355 of the Education Code, which provides, “[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 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.” *Abbott v. North East Indep. Sch. Dist.*, 212 S.W.3d 364 (Tex. App.—Austin 2006, no pet.). In Open Records Decision No. 643, we concluded 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 contend the information in Exhibit B is confidential pursuant to section 21.355 of the Education Code. You inform us the two individuals who are the subjects of the information are both currently teachers of the district and held teaching certificates at the time the information was created. You state the documents in Exhibit B “refer to formal letters of reprimand that were placed in [the individuals’] personnel files” and the documents “directly

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<sup>3</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>.

record the reasoning behind the issuance and substance of these letters of reprimand[.]” We note the information in Exhibit B consists of a conference summary, meeting notes, timelines pertaining to a Level 3 hearing, and a summary of an internal investigation of an incident involving the named student. This information does not constitute evaluations of the performance of a teacher for the purposes of section 21.355. Accordingly, the district may not withhold any of the information in Exhibit B under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code.

Section 552.101 of the Government Code also encompasses information other statutes make confidential. You raise section 552.101 in conjunction with section 101.104 of the Texas Civil Practice and Remedies Code for the information submitted in Exhibit C. Section 101.104 provides,

(a) Neither the existence nor the amount of insurance held by a governmental unit is admissible in the trial of a suit under [the Texas Tort Claims Act].

(b) Neither the existence nor the amount of the insurance is subject to discovery.

Civ. Prac. & Rem. Code § 101.104. Section 101.104 prohibits the discovery and admission of insurance information during a trial under the Texas Tort Claims Act, chapter 101 of the Civil Practice and Remedies Code. *See City of Bedford v. Schattman*, 776 S.W.2d 812, 813-14 (Tex. App.—Fort Worth 1989, orig. proceeding) (protection from producing evidence of insurance coverage under section 101.104 is limited to actions brought under the Tort Claims Act). However, section 101.104 does not make insurance information confidential for purposes of section 552.101 of the Government Code. *See Open Records Decision No. 551 at 3 (1990)* (provisions of section 101.104 “are not relevant to the availability of the information to the public”). The Act differs in purpose from statutes and procedural rules providing for discovery in judicial proceedings. *See Gov’t Code §§ 552.005 (Act does not affect scope of civil discovery), .006 (Act does not authorize withholding public information or limit availability of public information to public except as expressly provided by the Act); see also Attorney General Opinion JM-1048 (1989); Open Records Decision No. 575 (1990) (overruled in part by Open Records Decision No. 647 (1996)) (section 552.101 does not encompass discovery privileges)*. Thus, we find section 101.104 of the Civil Practice and Remedies Code does not make the information at issue confidential for purposes of section 552.101 of the Government Code. Therefore, the district may not withhold any portion of the information in Exhibit C under section 552.101 of the Government Code in conjunction with section 101.104 of the Civil Practice and Remedies Code.

Section 552.102(a) of the Government Code excepts from disclosure “information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.” Gov’t Code § 552.102(a). The Texas Supreme Court 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. *Tex. Comptroller of Pub. Accounts*

*v. Attorney Gen. of Tex.*, 354 S.W.3d 336 (Tex. 2010). Having carefully reviewed the information at issue, we find no portion of the submitted information is subject to section 552.102(a) of the Government Code, and the district may not withhold any of the submitted information on that basis.

Section 552.136 of the Government Code provides, “[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” Gov’t Code § 552.136(b); *see id.* § 552.136(a) (defining “access device”). This office has determined insurance policy numbers are access device numbers for purposes of section 552.136. *See id.* § 552.136(a) (defining “access device”). Accordingly, the district must withhold the insurance policy numbers we have marked under section 552.136 of the Government Code. As you raise no further exceptions to disclosure, the remaining submitted 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](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,



Claire V. Morris Sloan  
Assistant Attorney General  
Open Records Division

CVMS/som

Ref: ID# 460861

Enc. Submitted documents

c: Requestor  
(w/o enclosures)