



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 2, 2012

Mr. S. Anthony Safi
For El Paso Independent School District
Mounce, Green, Myers, Safi, Paxson & Galatzan, P.C.
P.O. Box 1977
El Paso, Texas 79999-1977

OR2012-12086

Dear Mr. Safi:

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# 460764 (EPISD ORR 2012.139).

The El Paso Independent School District (the "district"), which you represent, received a request for information pertaining to a specified incident involving a named employee and any resulting disciplinary action. You state the district has released some of the requested information. 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.

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 other statutes. Section 21.355 of the Education Code provides that "[a] document evaluating the performance of a teacher or administrator is confidential." Educ. Code § 21.355. In Open Records Letter No. 643, this office interpreted section 21.355 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). In that opinion, we concluded an administrator is someone who is required to hold and does hold a certificate or permit required under chapter 21 of the Education Code and is administering at the time of his or her evaluation. *Id.* In addition, the Third Court of Appeals has held a written reprimand

constitutes an evaluation for purposes of section 21.355 because “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.).

You contend the submitted information evaluates the performance of a certified administrator. You state the employee concerned was acting in her administrative capacity when the submitted documents were created. Based on your representations and our review, we conclude the information we have marked consists of an administrator evaluation for purposes of section 21.355. Accordingly, the marked information is confidential under section 21.355 of the Education Code and must be withheld under section 552.101 of the Government Code. However, we find you have failed to demonstrate the remaining information consists of an administrator evaluation subject to section 21.355 of the Education Code, and it may not be withheld under section 552.101 on that basis. As you raise no further exceptions to disclosure, the remaining 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,



Jennifer Burnett
Assistant Attorney General
Open Records Division

JB/som

Ref: ID# 460764

Enc. Submitted documents

c: Requestor
(w/o enclosures)