



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 19, 2012

Ms. Jennifer M. Engdale
Counsel for Simms Independent School District
Powell & Leon, L.L.P.
1706 West Sixth Street
Austin, Texas 78703

OR2012-14934

Dear Ms. Engdale:

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# 465757.

The Simms Independent School District (the "district"), which you represent, received a request for thirty-four categories of information. You state the district has released some of the requested information to the requestor. You claim that 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. 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

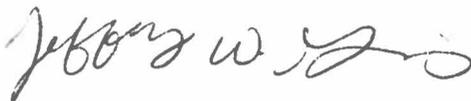
does in fact hold a certificate or permit required under chapter 21 of the Education Code and (2) is teaching or performing the functions of an administrator at the time of his or her evaluation. *Id.*

You assert that Attachments 2 and 3 are evaluations of an administrator and that Attachments 4 and 5 are evaluations of a teacher that are all confidential under section 21.355. You state, and provide documentation showing, that both the administrator and teacher at issue each held the appropriate certification at the time of the evaluations. Based on your representations and our review, we find that Attachment 3 constitutes an evaluation as contemplated by section 21.355. Accordingly, the district must withhold Attachment 3 under section 552.101 in conjunction with section 21.355 of the Education Code. However, we find that Attachment 2, the Notice of Administrative Leave with Pay, 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. Furthermore, we find Attachments 4 and 5 pertain to the named teacher in his capacity as a coach. Therefore, we find you have failed to demonstrate how these documents constitute evaluations of the performance of a teacher or an administrator for the purposes of section 21.355 of the Education Code. *See* Educ. Code § 21.353 (teachers shall be appraised only on basis of classroom teaching performance and not in connection with extracurricular activities). Accordingly, the district may not withhold Attachments 2, 4 or 5 under section 552.101 of the Government Code on this basis. 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,



Jeffrey W. Giles
Assistant Attorney General
Open Records Division

JWG/tch

Ref: ID# 465757

Enc. Submitted documents

c: Requestor
(w/o enclosures)