



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 20, 2012

Ms. Carol Simpson
Counsel for the Maypearl ISD
Eichelbaum Wardell Hansen Powell & Mehl, P.C.
5300 Democracy Drive, Suite 200
Plano, Texas 75024

OR2012-15016

Dear Ms. Simpson:

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# 465905.

The Maypearl Independent School District (the "district"), which you represent, received a request for all documents from a specified time period referencing the requestor's child; all documents from a specified time period referencing the requestor and her husband; all documents from specified time periods written by, sent to or from, or referring to a named individual, with the exception of the individual's Professional Development and Appraisal System ("PDAS") evaluation, driver's license, transcripts, W-2 forms, and I-9 forms; and all documents by a party responding to the aforementioned documents.¹ You state some of the requested information has been released to the requestor with social security numbers

¹You state the district sought and received clarification of the information requested. See Gov't Code § 552.222 (providing that if request for information is unclear, governmental body may ask requestor to clarify request); see also *City of Dallas v. Abbott*, 304 W.S.3d 380 (Tex. 2012) (holding when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed). You also inform us the requestor was required to make a deposit for payment of anticipated costs under section 552.263 of the Government Code, which the district received on July 21, 2012. See *id.* § 552.263(e) (if governmental body requires deposit or bond for anticipated costs pursuant to section 552.263, request for information is considered to have been received on date that governmental body receives deposit or bond).

redacted in accordance with section 552.147 of the Government Code.² You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.³ We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

Initially, the requestor contends the district has not released portions of the requested information. Whether the district actually provided the information at issue is a question of fact. This office is unable to resolve disputes of fact in the open records ruling process. Accordingly, we must rely upon the facts alleged to us by the governmental body requesting our opinion, or upon those facts that are discernable from the documents submitted for our inspection. *See* Open Records Decision No. 522 at 4 (1990). Thus, we assume the district has released to the requestor any information for which the district is not claiming an exception. If not, the district must do so at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

Next, we note the requestor excluded PDAS evaluations from the request. Thus, this type of information is not responsive to the request. This ruling does not address the public availability of any information that is not responsive to the request, and the district need not release any such 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 exception encompasses information other statutes make confidential. Section 552.101 of the Government Code encompasses section 21.355 of the Education Code, which provides, "[a] document evaluating the performance of a teacher . . . is confidential." *See* 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. *See* Open Records Decision No. 643 (1996). We have determined for purposes of section 21.355, the term "teacher" means a person who is required to and does in fact hold a teaching certificate or permit under subchapter B of chapter 21 of the Education Code and who is engaged in the process of teaching, as that term is commonly defined, at the time of the evaluation. *See id.* at 4.

²Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office. *See* Gov't Code § 552.147(b).

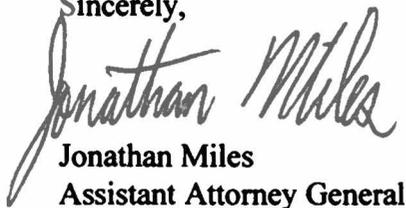
³We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

You state the responsive information consists of teacher evaluations. You inform us the individual at issue is certified as a teacher and was employed as a teacher at the time of the evaluations. Based on your representations and our review of the information, we find the information we have marked is confidential under section 21.355 of the Education Code, and the district must withhold this information under section 552.101 of the Government Code. However, we note the remaining responsive information consists of evaluations relating to the individual's duties as a coach. Upon review, we conclude you have failed to demonstrate how this information consists of evaluations as contemplated by 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 the remaining responsive information under section 552.101 of the Government Code in conjunction with section 21.355(a) of the Education Code. As you raise no further exceptions, the remaining responsive 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,



Jonathan Miles
Assistant Attorney General
Open Records Division

JM/bhf

Ref: ID# 465905

Enc. Submitted documents

c: Requestor
(w/o enclosures)