



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 3, 2012

Mr. Andrew D. Clark
Powell & Leon, L.L.P.
1706 West Sixth Street
Austin, Texas 78703

OR2012-15703

Dear Mr. Clark:

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# 467218.

The Orangefield Independent School District (the "district"), which you represent, received a request for all information pertaining to a named individual. You state some information will be provided to the requestor with redactions pursuant to the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code.¹ You claim the submitted information is excepted from disclosure under sections 552.101 and 552.102 of the Government Code. We have considered the exceptions 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, such as section 21.355 of the Education Code, which provides, in relevant part, "[a] document

¹The United States Department of Education Family Policy Compliance Office (the "DOE") has informed this office FERPA does not permit state and local educational authorities to disclose to this office, without parental or student consent, unredacted, personally identifiable information contained in education records for the purpose of our review in the open records ruling process under the Act. The DOE has determined FERPA determinations must be made by the educational authority in possession of the education records. A copy of this letter may be found on the Office of the Attorney General's website: <http://www.oag.state.tx.us/open/20060725usdoe.pdf>.

evaluating the performance of a teacher or administrator is confidential.” Educ. Code § 21.355(a). The Third Court of Appeals has concluded 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.). 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 administrator. *See* Open Records Decision No. 643 (1996). In Open Records Decision No. 643, we determined for purposes of section 21.355, the word “teacher” means a person who is required to and does in fact hold a teaching certificate under subchapter B of chapter 21 of the Education Code and who is in the process of teaching, as that term is commonly defined, at the time of the evaluation. *See id.* at 4.

You contend the information in Exhibit A consists of confidential evaluations of a teacher by the district. However, you do not indicate whether the teacher at issue was certified as a teacher by the State Board of Educator Certification at the time of the evaluations and was engaged in the process of teaching at the time of the evaluations. *See* ORD 643 at 4. Accordingly, we must rule conditionally. To the extent the information we have marked pertains to an employee who held a teaching certificate or permit under chapter 21 of the Education Code and was engaged in the process of teaching when the information was created, the district must withhold the marked information under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code. To the extent the employee did not hold a teaching certificate or permit under chapter 21 of the Education Code or was not engaged in teaching when the information was created, the marked information is not confidential under section 21.355 of the Education Code and may not be withheld on that basis under section 552.101 of the Government Code. Upon review, however, we find the remaining information in Exhibit A consists of a conference waiver completed by the employee that does not evaluate a teacher for purposes of section 21.355. Thus, we find you have failed to demonstrate how the remaining information at issue consists of a document evaluating the performance of a teacher or administrator for purposes of section 21.355 of the Education Code. Therefore, the district may not withhold the remaining information in Exhibit A under section 552.101 in conjunction with section 21.355 of the Education Code.

You claim the information in Exhibit B is subject to section 552.102(b) of the Government Code, which excepts from disclosure all information in transcripts of a professional public school employee other than the employee’s name, the courses taken, and the degree obtained. Gov’t Code § 552.102(b); Open Records Decision No. 526 (1989). Thus, with the exception of the employee’s name, courses taken, and degree obtained, the district must withhold the transcript we have marked under section 552.102(b) of the Government Code. However, we find you have failed to demonstrate the remaining information at issue consists of a transcript of a professional public school employee. Accordingly, the district may not withhold the remaining information in Exhibit B under section 552.102(b) of the Government Code.

In summary, to the extent the information we have marked pertains to an employee who held a teaching certificate or permit under chapter 21 of the Education Code and was engaged in the process of teaching when the information was created, the district must withhold the marked information under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code. With the exception of the employee's name, courses taken, and degree obtained, the district must withhold the transcript we have marked under section 552.102(b) of the Government Code. The district must release the remaining information.

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/tch

Ref: ID# 467218

Enc. Submitted documents

c: Requestor
(w/o enclosures)

