ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 27, 2012

Ms. Elisabeth D. Nelson
Counsel for the Lewisville Independent School District
Law Offices of Robert E. Luna, P.C.
4411 North Central Expressway
Dallas, Texas 75205

OR2012-19015

Dear Ms. Nelson:

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# 471889.

The Lewisville Independent School District (the "district"), which you represent, received a request for information pertaining to a specified incident involving the requestor's child.[1] You state you have released some information to the requestor. 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.

We note, and you acknowledge, the district did not comply with its deadlines under section 552.301 of the Government Code in requesting this decision. *See* Gov't Code § 552.301(a)-(b), (e). Pursuant to section 552.302 of the Government Code, the submitted information is therefore presumed to be subject to required public disclosure and must be released, unless there is a compelling reason to withhold any of the information. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ); *see also* Open Records Decision No. 630 (1994). This statutory presumption can generally be overcome when information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3, 325 at 2 (1982). Because your claim under section 552.101 of the Government Code can provide a compelling reason for non-disclosure, we will address your argument under this exception.

[1]We note the district sought and received clarification of the request. *See* Gov't Code § 552.222(b) (providing that if request for information is unclear, governmental body may ask requestor to clarify request); *see also City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when governmental entity, acting in good faith, requests clarification or narrowing of unclear or overbroad request for public information, ten-day period to request attorney general ruling is measured from date request is clarified or narrowed).

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 made confidential by statute, such as section 21.355 of the Education Code. Section 21.355 provides in part "[a] document evaluating the performance of a teacher or administrator is confidential." Educ. Code § 21.355(a). This office has interpreted this section to apply to any document that evaluates, as that term is commonly understood, the performance of a teacher. Open Records Decision No. 643 (1996). This office has also concluded that a teacher is someone who is required to hold, and does hold, a certificate or permit required under chapter 21 of the Education Code, and is teaching at the time of his or her evaluation. *Id.* In addition, 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.).

You assert the submitted information consists of information relating to letters of reprimand regarding a district teacher. You state the named individual held a teacher's certificate under chapter 21 of the Education Code and was performing the functions of a teacher at the time of the evaluations. Upon review, we agree the submitted information constitutes teacher evaluations for purposes of section 21.355. Accordingly, the district must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code.

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# 471889

Enc. Submitted documents

c: Requestor
(w/o enclosures)