



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 2, 2013

Ms. Heather M. Castillo
Hill Gilstrap, P.C.
1400 West Abram Street
Arlington, Texas 76013

OR2013-07294

Dear Ms. Castillo:

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# 487930.

The Arlington Independent School District (the "district"), which you represent, received a request for (1) complaints filed against a named individual at Boles Junior High School (the "school") during a specified time period; (2) disciplinary actions taken against the named individual during the same specified time period; and (3) responses to all public information requests received regarding the named individual during the same specified time period.¹ You state the district is making some information available to the requestor. You also state the district has withheld student identifying information pursuant to the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code.²

¹We note the district sought and received clarification of the request. *See* Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information).

²The United States Department of Education Family Policy Compliance Office (the "DOE") has informed this office that FERPA does not permit a state educational agency or institution to disclose to this office, without parental or an adult student's consent, unredacted, personally identifiable information contained in education records for the purpose of our review in the open records ruling process under the Act. *See* 34 C.F.R. § 99.3 (defining "personally identifiable information"). The DOE has determined that FERPA determinations must be made by the educational institution from which the education records were

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 exception encompasses information other statutes make confidential. You contend the submitted information is confidential under section 21.355 of the Education Code, which provides in part 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). We have determined that 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 or a school district teaching permit under section 21.055 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. We note 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.” *See Abbott v. North East Indep. Sch. Dist.*, 212 S.W.3d 364 (Tex. App.—Austin 2006, no pet.).

You contend the submitted information consists of a confidential evaluation of the named individual. You state the named individual was employed by the district as a teacher when her performance was evaluated. You state the named individual holds the appropriate certification under subchapter B of the Education Code. Based on your representations and our review of the submitted information, we find 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

obtained. A copy of the DOE’s letter to this office may be found on the Office of the Attorney General’s website: <http://www.oag.state.tx.us/open/20060725usdoe.pdf>.

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,

A handwritten signature in black ink, appearing to read "Sean Nottingham".

Sean Nottingham
Assistant Attorney General
Open Records Division

SN/tch

Ref: ID# 487930

Enc. Submitted documents

c: Requestor
(w/o enclosures)