



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 9, 2013

Ms. Melanie L. Hollmann
Atkins, Hollmann, Jones, Peacock, Lewis & Lyon, P.C.
3800 East 42nd Street, Suite 500
Odessa, Texas 79762

OR2013-07708

Dear Ms. Hollmann:

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# 486748.

The Ector County Independent School District (the "district"), which you represent, received a request for the personnel file of a named employee. You state the district is redacting some information pursuant to the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code.¹ You also state the district is supplying some of the requested information to the requestor but claim the submitted information is excepted from disclosure under section 552.101 of the Government Code.² We have considered the claimed exception and reviewed the submitted information.

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 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. We have posted a copy of the letter from the DOE to this office on the Attorney General's website: <http://www.oag.state.tx.us/open/20060725usdoe.pdf>.

²Although the district also raises section 552.102 of the Government Code, we understand the district to assert section 552.101 for these arguments instead.

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. Section 21.355 of the Education Code provides, in relevant part, "[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 administrator. *See* Open Records Decision No. 643 (1996). In Open Records Decision No. 643, we determined an "administrator" for purposes of section 21.355 means a person who is required to, and does in fact, hold an administrator's certificate under subchapter B of chapter 21 of the Education Code, and is performing the functions as an administrator, as that term is commonly defined, at the time of the evaluation. *Id.*

You argue the submitted information consist of confidential evaluations of an administrator by the district. You inform us, and provide documentation demonstrating, the administrator at issue was certified as an administrator by the State Board of Educator Certification and was acting as an administrator at the time the evaluations were prepared. Upon review, we find some of the submitted information constitutes evaluations of the administrator at issue. Therefore, the district must withhold this information, which we have marked, under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code. We find you have not established how the remaining information, which includes written responses by the administrator at issue to complaints made against her and supporting documents that you inform us relate to the investigation of the complaints, constitutes evaluations of the administrator's performance as contemplated by section 21.355. Accordingly, the district may not withhold the remaining information under section 552.101 on that basis.

We note some of the remaining information consists of evaluations of another district employee. We are unable to discern whether, at the time of these evaluations, the employee at issue was certified as a teacher or administrator and was performing the functions of a teacher or an administrator. Accordingly, we must rule conditionally. To the extent the employee at issue was certified as a teacher or an administrator and was evaluated for the employee's performance as a teacher or administrator in the submitted evaluations, the district must withhold the evaluations of this individual we have marked under section 552.101 in conjunction with section 21.355. *See id.* To the extent the employee at issue was not certified as a teacher or administrator or was not performing the functions of a teacher or administrator at the time of the evaluations at issue, the district may not withhold this information under section 552.101 on that ground.

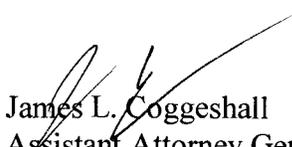
To conclude, the district must withhold the evaluations of the administrator at issue we have marked under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code. The district must also withhold the evaluations we have marked of the other employee at issue if the employee was certified as a teacher or administrator and

was evaluated for the employee's performance as a teacher or administrator under section 552.101 on that same ground. The district must release the remaining information to the requestor.

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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/tch

Ref: ID# 486748

Enc. Submitted documents

c: Requestor
(w/o enclosures)