



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 22, 2013

Ms. Heather M. Castillo
Counsel for the Arlington Independent School District
Hill Gilstrap
1400 West Abram Street
Arlington, Texas 76013

OR2013-08553

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# 487928.

The Arlington Independent School District (the "district"), which you represent, received a request for information pertaining to a named district employee prior to, during, and after a specified incident involving the employee. You state the district has 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 the United States Department of Education Family Policy Compliance Office (the "DOE") has informed this office the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code, 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.¹ Consequently, state and local educational authorities that receive a request for education records from a member of the public under the Act must not submit education records to this office in unredacted form, that

¹A 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>.

is, in a form in which “personally identifiable information” is disclosed. *See* 34 C.F.R. § 99.3 (defining “personally identifiable information”). In this instance, you have submitted unredacted records for our review. Because our office is prohibited from reviewing education records, we will not address the applicability of FERPA to any of the submitted information. Such determinations under FERPA must be made by the educational authority in possession of the education records. We will, however, address your argument for this information.

Section 552.101 of the Government Code exempts 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 part that “[a] document evaluating the performance of a teacher or administrator 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 or an administrator. *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* ORD 643 at 4. 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 North East Indep. Sch. Dist. v. Abbott*, 212 S.W.3d 364 (Tex. App.—Austin 2006, no pet.).

You state the submitted information consists of the named teacher’s evaluations. You inform us this individual was required to, and held certification under subchapter B of chapter 21 of the Education Code at the time of the evaluations. You further state the individual at issue was performing the duties of a teacher at the time of the evaluations. Based on your representations and our review of the information, we find most of the submitted information 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 find you have failed to demonstrate the teacher self-report forms constitute evaluations of the teacher’s performance as contemplated by section 21.355 of the Education Code. Thus, the district may not withhold the teacher self-report forms under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code. As you raise no other exceptions against disclosure of the self-report forms, they 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,



Ana Carolina Vieira
Assistant Attorney General
Open Records Division

ACV/ag

Ref: ID# 487928

Enc. Submitted documents

c: Requestor
(w/o enclosures)