



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 3, 2013

Ms. Katheryne MarDock
Assistant General Counsel
Houston Independent School District
4400 West 18th Street
Houston, Texas 77092-8501

OR2013-11375

Dear Ms. MarDock:

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# 492118.

The Houston Independent School District (the "district") received a request for information pertaining to a named employee, including (1) her work history, (2) the rationale for her reassignment, (3) a named individual's reasons for attempting to terminate the named employee, and (4) the status of the termination attempt. You state the district has no information responsive to items two and four of the request.¹ You further state the district has released information responsive to item one of the request. 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

¹The Act does not require a governmental body to release information that did not exist when it received a request or to create responsive information. See *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

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.” 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, “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. 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 hearing examiner’s recommendations are confidential under section 21.355 of the Education Code. You state the information at issue consists of an evaluation of a teacher employed by the district, who we understand was functioning as a teacher and was required to and did hold the appropriate certifications under subchapter B of the Education Code. Alternatively, you state the hearing examiner’s recommendations contain evaluations of the teacher’s classroom performance, which you have highlighted. Based on your representations and our review, we conclude portions of the submitted information reveal evaluations of the teacher’s performance, and are subject to section 21.355 of the Education Code. Therefore, the district must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code. However, we find you have failed to demonstrate how the remaining information constitutes an evaluation of the performance of an individual teacher for the purpose of section 21.355. Accordingly, the district may not withhold any of the remaining information under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code. As you raise no further exception to disclosure, the remaining information 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.texasattorneygeneral.gov/open_orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in cursive script that reads "Kathleen J. Santos". The signature is written in black ink and is positioned above the typed name.

Kathleen J. Santos
Assistant Attorney General
Open Records Division

KJS/som

Ref: ID# 492118

Enc. Submitted documents

c: Requestor
(w/o enclosures)