



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 11, 2013

Mr. Christopher B. Gilbert
Counsel for the Katy Independent School District
Thompson & Horton, LLP
3200 Southwest Freeway
Houston, Texas 77027

OR2013-11848

Dear Mr. Gilbert:

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# 492763.

The Katy Independent School District (the "district"), which you represent, received a request for all information pertaining to the suspension of two named individuals. 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.

Initially, the district acknowledges, and we agree, the district did not comply with its ten business-day deadline under section 552.301 of the Government Code in requesting this decision. Gov't Code § 552.301(b). Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *Id.* § 552.302; *see also 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). 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 (1994), 325 at 2 (1982)*. Because the district's claim under section 552.101 of the Government Code can provide a compelling reason for non-disclosure, we will address the district's argument under this exception.

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 that “[a] document evaluating the performance of a teacher or administrator is confidential.” Educ. Code § 21.355. In Open Records Letter No. 643, this office interpreted section 21.355 to apply to any document that evaluates, as that term is commonly understood, the performance of a teacher or administrator. 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 and who is engaged in the process of teaching, as that term is commonly defined, at the time of the evaluation. *Id.* at 4. We have determined the word “administrator” for purposes of section 21.355 means a person who (1) is required to, and does in fact, hold an administrator’s certificate under subchapter B of chapter 21 of the Education Code, and (2) is performing the functions of an administrator, as that term is commonly defined, at the time of the evaluation. *Id.* In addition, the Third Court of Appeals has held 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 state the submitted information constitutes evaluations concerning the named individuals. We note some of the submitted information consists of the evaluations of a district employee. However, you make no representation, nor are we able to discern, that at the time of these evaluations, the employee at issue was certified as an administrator and was performing the functions of an administrator. Therefore, we are unable to determine whether section 21.355 is applicable to these evaluations. Accordingly, to the extent the employee was certified as an administrator and was evaluated for her performance as an administrator in the marked evaluations, they are confidential under section 21.355 and must be withheld under section 552.101. *See* ORD 643 at 4. To the extent the employee was not certified as an administrator or was not performing the functions of an administrator at the time of the evaluations at issue, they may not be withheld under section 552.101 in conjunction with section 21.355 and must be released. Upon review, however, we find the remaining information does not constitute an evaluation of the individual’s performance as a teacher or an administrator for the purposes of section 21.355. Thus, the district may not withhold the remaining information under section 552.101 in conjunction with section 21.355.

We note portions of the submitted information may be subject to section 552.117 of the Government Code.¹ Section 552.117(a)(1) excepts from disclosure the home addresses and telephone numbers, emergency contact information, social security numbers, and family member information of current or former officials or employees of a governmental body who request this information be kept confidential under section 552.024 of the Government Code. Gov’t Code § 552.117(a)(1). Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body’s receipt of

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

the request for the information. *See* Open Records Decision No. 530 at 5 (1989). Information may only be withheld under section 552.117(a)(1) on behalf of a current or former official or employee who made a request for confidentiality under section 552.024 prior to the date of the governmental body's receipt of the request for the information. Thus, if the individuals whose information we have marked timely requested confidentiality under section 552.024, the district must withhold the information we have marked under section 552.117(a)(1). Conversely, if the individuals did not make a timely election under section 552.024, the district may not withhold the marked information under section 552.117(a)(1).

In summary, to the extent the employee was certified as an administrator and was evaluated for her performance as an administrator in the marked evaluations, they are confidential under section 21.355 of the Education Code and must be withheld under section 552.101 of the Government Code. If the individuals whose information we have marked timely requested confidentiality under section 552.024 of the Government Code, the district must withhold the information we have marked under section 552.117(a)(1) of the Government Code. The district must release the remaining information.

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,



Nneka Kanu
Assistant Attorney General
Open Records Division

NK/bhf

Ref: ID# 492763

Enc. Submitted documents

c: Requestor
(w/o enclosures)