



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 22, 2013

Mr. Joseph L. Parks  
Executive Director  
Safety and Security Services  
Plano Independent School District  
2700 West 15<sup>th</sup> Street  
Plano, Texas 75075

OR2013-12603

Dear Mr. Parks:

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# 493741 (PISD No. 2013-118).

The Plano Independent School District (the "district") received a request for a specified investigation report. You state you are releasing some of the requested information to the requestor. You claim that 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, we understand the district has withheld educational records pertaining to a district student based on the provisions of the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232g. The United States Department of Education Family Policy Compliance Office has informed this office that FERPA does not permit state and local educational authorities to disclose to this office, without parental consent 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.<sup>1</sup> Consequently, state and local educational authorities that receive a request for education

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<sup>1</sup>A copy of this letter may be found on the Office of the Attorney General's website: <http://www.oag.state.tx.us/open/20060725usdoc.pdf>.

records from a member of the public under the Act must not submit education records to this office in unredacted form, that is, in a form in which “personally identifiable information” is disclosed. *See* 34 C.F.R. § 99.3 (defining “personally identifiable information”). Because our office is prohibited from reviewing the education records at issue to determine whether appropriate redactions under FERPA have been made, we will not address the applicability of FERPA to any of this information, other than to note that parents have a right of access to their child’s educational records. *See* 20 U.S.C. § 1232g(a)(1)(A); 34 § C.F.R 99.3. Such determinations under FERPA must be made by the educational authority in possession of the education records.

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. Section 552.101 encompasses information protected by other statutes, such as section 21.355 of the Education Code. Section 21.355 provides that “[a] document evaluating the performance of a teacher or administrator is confidential.” Educ. Code § 21.355. In addition, the court 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.” *North East Indep. Sch. Dist. v. Abbott*, 212 S.W.3d 364 (Tex. App.—Austin 2006, no pet.). This office has interpreted this section 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). In that opinion, we concluded that a teacher is someone who is required to hold and does hold a certificate or permit required under chapter 21 of the Education Code and is teaching at the time of his or her evaluation. *See id.* at 4.

You contend the submitted information consists of an evaluation of a teacher that is confidential under section 21.355 of the Education Code. Upon review, we find the information we have marked constitutes a document that evaluates the performance of a teacher. You state the individual at issue was employed by the district and held the appropriate teacher certification at the time the information was created. Accordingly, 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 none of the remaining information constitutes an evaluation of an individual’s performance as a teacher or administrator for the purposes of section 21.355. Therefore, we find you have failed to demonstrate the remaining information constitutes teacher or administrator evaluations subject to section 21.355 of the Education Code, and it may not be withheld under section 552.101 of the Government Code on that basis. As you raise no further exceptions 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](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 black ink, appearing to read 'Sarah Casterline', with a long horizontal flourish extending to the right.

Sarah Casterline  
Assistant Attorney General  
Open Records Division

SEC/tch

Ref: ID# 493741

Enc. Submitted documents

c: Requestor  
(w/o enclosures)