



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 25, 2013

Mr. S. Anthony Safi  
Counsel for the El Paso Independent School District  
Mounce, Green, Myers, Safi, Paxson & Galatzan, P.C.  
P.O. Box 1977  
El Paso, Texas 79999-1977

OR2013-12870

Dear Mr. Safi:

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# 494229 (ORR# 2013.170).

The El Paso Independent School District (the "district"), which you represent, received a request for documents citing the reason a named former employee was removed from his position as principal at a named school and sent to a different named school as assistant principal. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. You state you have notified the individual to whom the requested information relates pursuant to section 552.304 of the Government Code. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). We have received comments from the individual at issue. We have considered the submitted arguments 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." *Id.* § 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 (1996), 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. ORD 643. 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 employee. You state at the time of these evaluations the employee at issue was certified as an administrator and was performing the functions of an administrator. Upon review, we find the information we have marked is confidential under section 21.355 and must be withheld under section 552.101. However, we find the remaining information does not constitute an evaluation of the employee’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. As no further exceptions to disclosure have been raised, 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.oag.state.tx.us/open/index\\_orl.php](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# 494229

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Mr. James Lamonica  
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El Paso, Texas 79924  
(w/o enclosures)