



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 3, 2013

Ms. Chris G. Elizalde
Counsel for Granbury Independent School District
Walsh, Anderson, Gallegos, Green and Treviño, P.C.
505 East Huntland Drive
Austin, Texas 78752

OR2013-20826

Dear Ms. Elizalde:

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# 507549.

The Granbury Independent School District (the "district"), which you represent, received a request for the personnel file of a former employee, including letters of commendation, complaints, and reprimands.¹ You state the district will release some information to the requestor. You state the district has redacted social security numbers subject to section 552.117(a)(1) pursuant to section 552.024 of the Government Code.² You state the

¹We note the district sought and received clarification of the information requested. *See* Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); *see also* *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or over-broad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

²Section 552.024 authorizes a governmental body to redact from public release a current or former employee's home address and telephone number, emergency contact information, and social security number excepted from disclosure under section 552.117(a)(1) without the necessity of requesting a decision from this office under the Act, if the employee timely elected to withhold such information, except as provided by section 552.024(a-1). *See* Gov't Code §§ 552.024, .117(a)(1). Section 552.024(a-1) of the Government Code provides, "A school district may not require an employee or former employee of the district to choose whether to allow public access to the employee's or former employee's social security number." *Id.* § 552.024(a-1).

district has redacted personal e-mail addresses in accordance with section 552.137 of the Government Code and Open Records Decision No. 684 (2009).³ You further state the district has redacted some information from the submitted documents pursuant to the Family Educational Rights and Privacy Act (“FERPA”), section 1232g of title 20 of the United States Code.⁴ 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 Code § 552.101. This section encompasses information protected by other statutes, such as section 21.355 of the Education Code. Section 21.355 provides, in relevant part, as follows:

(a) A document evaluating the performance of a teacher or administrator is confidential.

(b) Subsection (a) applies to a teacher or administrator employed by an open-enrollment charter school regardless of whether the teacher or administrator is certified under Subchapter B.

Educ. Code § 21.355(a), (b). 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 administrator. *See* Open Records Decision No. 643 (1996). In Open Records Decision No. 643, we determined 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 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.” *Abbott v. North East Indep. Sch. Dist.*, 212 S.W.3d 364 (Tex. App.—Austin 2006, no pet.).

³Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold certain categories of information, including e-mail addresses of members of the public under section 552.137, without the necessity of requesting an attorney general decision.

⁴The United States Department of Education Family Policy Compliance Office (the “DOE”) has informed this office FERPA does not permit state and local educational authorities to disclose to this office, without parental or student consent, unredacted, personally identifiable information contained in education records for the purpose of our review in the open records ruling process under the Act. The DOE has determined FERPA determinations must be made by the educational authority in possession of the education records. A 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>.

You contend the information in Exhibits D and F constitutes evaluations of the former employee. The submitted documents reveal the former employee held the appropriate teaching certificate at the time of the creation of the evaluations and was teaching at the time of the evaluations. Based on your representations and our review, we conclude the information in Exhibit D and the information we marked in Exhibit F are confidential under section 21.355 of the Education Code and must be withheld under section 552.101 of the Government Code. However, we find none of the remaining information in Exhibit F consists of teacher evaluations for the purposes of section 21.355 of the Education Code, and the district may not withhold any of the remaining information in Exhibit F under section 552.101 of the Government Code on that basis. As you raise no other exceptions, 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,



Paige Thompson
Assistant Attorney General
Open Records Division

PT/dls

Ref: ID# 507549

Enc. Submitted documents

c: Requestor
(w/o enclosures)