



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 15, 2014

Mr. Brandon S. Winchester
Thompson & Horton, L.L.P.
Phoenix Tower, Suite 2000
3200 Southwest Freeway
Houston, Texas 77027-7528

OR2014-08345

Dear Mr. Winchester:

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# 522726.

The Arrow Academy (the "academy"), which you represent, received a request for information pertaining to the requestors' child and any memos, write-ups, and reprimands for any employees directly responsible for the provision of services to the requestors' child. You state the academy is releasing some of the requested information. You claim the remaining requested 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.

The United States Department of Education Family Policy Compliance Office (the "DOE") has informed this office that the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code, does not permit a state educational agency or institution to disclose to this office, without parental consent, unredacted, personally identifiable information contained in education records for the purpose of our review in the open records ruling process under the Act.¹ Consequently, state and local education authorities that receive a request for education records from a member of the

¹A 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>.

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”). In this instance, you have submitted unredacted education records for our review. Because our office is prohibited from reviewing education records, we will not address the applicability of FERPA to any of the submitted records, other than to note the requestors have a right of access to their own child’s education records and their right of access prevails over claims under section 552.101 of the Government Code. *See* 20 U.S.C. § 1232g(a)(1)(A); 34 C.F.R. § 99.3; *see also Equal Employment Opportunity Comm’n v. City of Orange, Tex.*, 905 F. Supp. 381, 382 (E.D. Tex. 1995) (holding FERPA prevails over inconsistent provision of state law). Such determinations under FERPA must be made by the educational authority in possession of such records. However, we will address the academy’s claimed exception to the extent the requestors do not have a right of access to the submitted information under FERPA.

Section 552.101 of the Government Code encompasses section 21.355 of the Education Code, which provides in part:

(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 an administrator. *See* Open Records Decision No. 643 (1996). 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.).

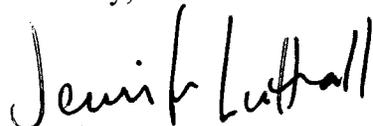
You state the submitted information consists of an evaluation and reprimands of employees at the academy, which is a Texas open-enrollment charter school. You contend this information is subject to section 21.355. We note the evaluation and one of the written reprimands is of a “kindergarten aide” and “instructional aide.” Section 21.355 does not apply to evaluations of educational aides. *See* Open Records Decision No. 643 at 5 (teacher interns, trainees, and educational aides are not “teachers” for purposes of section 21.355). Thus, the academy may not withhold this information under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code. However, upon review we find some of the remaining information, which we have marked, consists of reprimands. To the extent the employees who are the subjects of the reprimands we have marked were teachers who were functioning as teachers at the time of the reprimands, the

academy 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. To the extent the employees were not teachers or were not functioning as teachers at the time of the reprimands at issue, the academy may not withhold the information we have marked under section 552.101 of the Government Code on that ground. In addition, we find you have not established any of the remaining information consists of “[a] document evaluating the performance of a teacher or administrator” as contemplated by section 21.355. Accordingly, we conclude you have not established the remaining information is confidential under section 21.355, and the academy may not withhold it under section 552.101 on that ground. As the academy does not raise any further exceptions from 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,



Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/akg

Ref: ID# 522726

Enc. Submitted documents

c: Requestor
(w/o enclosures)