



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 18, 2014

Ms. Melody Chappell
Counsel for the Beaumont Independent School District
Wells, Peyton, Greenberg, & Hunt, L.L.P.
P.O. Box 3708
Beaumont, Texas 77704-3708

OR2014-10540

Dear Ms. Melody Chappell:

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# 526311.

The Beaumont Independent School District (the "district"), which you represent, received a request for four specified personnel files. You inform us some of the requested information will be provided to the requestor. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note Exhibit B is subject to section 552.022 of the Government Code. Section 552.022 provides, in relevant part, as follows:

(a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

...

(3) information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body[.]

Gov't Code § 552.022(a)(3). Exhibit B consists of information relating to the receipt or expenditure of public funds by the district, which is subject to section 552.022(a)(3) of the Government Code. You seek to withhold this information under section 552.108 of the Government Code. However, this is a discretionary exception and does not make information confidential under the Act. *See* Open Records Decision Nos. 665 at 2 n.5, 177 at 3 (1977) (statutory predecessor to Gov't Code § 552.108 subject to waiver). Thus, the district may not withhold the information subject to section 552.022 under section 552.108. However, because section 552.117 of the Government Code makes information confidential for purposes of 552.022, we will address the applicability of this section to the information at issue.¹

Section 552.117(a)(1) of the Government Code 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 that this information be kept confidential under section 552.024 of the Government Code. Gov't Code § 552.117(a)(1). Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Therefore, the district may only withhold information under section 552.117(a)(1) on behalf of current or former officials or employees who made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. Accordingly, to the extent the employee at issue timely elected to keep such information confidential under section 552.024, the district must withhold the information we have marked under section 552.117(a)(1) of the Government Code. If the employee did not make a timely election under section 552.024, the district may not withhold the information we have marked under section 552.117(a)(1) of the Government Code. In either case, the remainder of the documents subject to section 552.022(a)(3) of the Government Code must be released.

Next, we turn to your argument against the release of the information not subject to section 552.022(a)(3). 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. Section 552.101 encompasses section 21.355 of the Education Code, which provides that "[a] document evaluating the performance of a teacher or administrator is confidential." Educ. Code § 21.355(a). 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). Additionally, a court has concluded that a written reprimand constitutes an evaluation for purposes of section 21.355, as 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.). In Open

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

Records Decision No. 643, we concluded that a “teacher” for purposes of section 21.355 means a person who (1) is required to and does in fact hold a certificate or permit required under chapter 21 of the Education Code and (2) is teaching at the time of his or her evaluation. *See* ORD 643.

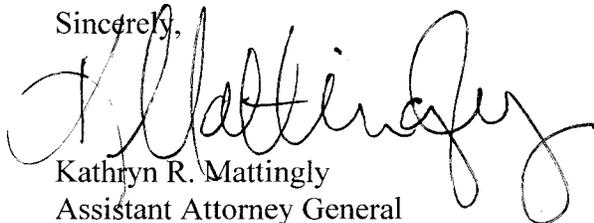
You assert Exhibit C consists of written evaluations that are confidential under section 21.355. You inform us the individual at issue held the appropriate certifications at the time of the evaluations. Based on your representations and our review, we agree some of the documents constitute evaluations as contemplated by section 21.355. Accordingly, except for the documents we have marked for release, the district must withhold Exhibit C under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code. However, you have not demonstrated any of the remaining information at issue evaluates the performance of a teacher or administrator for purposes of section 21.355; thus, none of the remaining information at issue may be withheld on that basis under section 552.101.

In summary, the district must withhold the information we have marked under section 552.117(a)(1) of the Government Code, if the employee at issue timely elected to keep such information confidential under section 552.024 of the Government Code, and release the remaining information pursuant to section 552.022(a)(3) of the Government Code. Except for the documents we have marked for release, the district must withhold Exhibit C under section 552.101 of the Government Code in conjunction with section 21.355 of the Education 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.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,



Kathryn R. Mattingly
Assistant Attorney General
Open Records Division

KRM/bhf

Ref: ID# 526311

Enc. Submitted documents

c: Requestor
(w/o enclosures)