



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 29, 2014

Ms. Ellen H. Spalding  
Counsel for Eanes Independent School District, L.L.P.  
Roger, Morris, and Grover  
5718 Westheimer Road, Suite 1200  
Houston, Texas 77057

OR2014-15276

Dear Ms. Spalding:

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# 534629.

The Eanes Independent School District (the "district"), which you represent, received a request for all documents pertaining to incorrectly administered STAAR tests at any school within the district during the 2013-2014 school year. We understand the district has redacted some information pursuant to the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code,<sup>1</sup> and e-mail addresses subject to section 552.137 of the Government Code pursuant to Open Records Decision No. 684 (2009). We understand the district will withhold the information you have marked under section 552.117 of the Government Code, as permitted by section 552.024(c) of the Government Code.<sup>2</sup> You claim the submitted information is excepted from disclosure under

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<sup>1</sup>The 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 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. We have posted a copy of the letter from the DOE to this office on the Attorney General's website: <http://www.oag.state.tx.us/open/20060725usdoe.pdf>

<sup>2</sup>Section 552.117 of the Government Code excepts from disclosure the home addresses and telephone numbers, social security numbers, emergency contact information, and family member information of current or former officials or employees of a governmental body. *See* Gov't Code § 552.117. Section 552.024 of the Government Code authorizes a governmental body to withhold information subject to section 552.117 without requesting a decision from this office if the employee or official or former employee or official chooses not to allow public access to the information. *See id.* §§ 552.117, .024(c).

sections 552.101 and 552.116 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>3</sup>

Initially, you state a portion of the information responsive to the request was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2014-11900 (2014). In that ruling, we concluded (1) portions of the information the district redacted under section 552.024(c) of the Government Code had to be released pursuant to section 552.023 of the Government Code if the requestor was the authorized representative of the individual whose information was at issue; (2) the evaluation at issue was confidential under section 21.355 of the Education Code and must be withheld under section 552.101 of the Government Code, unless the evaluation was of the type contemplated by section 21.352 of the Education Code and the requestor was acting as the authorized representative of the individual whose information was at issue; and (3) the remaining information had to be released. However, we note the requestor in the prior request may have had a right of access to certain information that the requestor in the instant request does not have. Accordingly, we find the facts and circumstances on which the previous ruling was based have changed with regard to the information responsive to the prior ruling. Therefore, we find the district may not follow Open Records Letter No. 2014-11900 with regard to any of 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. Section 21.355 of the Education Code provides, in relevant part, “[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 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.

You contend the remaining responsive information consists of confidential evaluations of teachers by the district. You inform us the teachers at issue were certified as teachers and were acting as teachers at the time the evaluations were prepared. Based on your representations and our review, we agree the information we have marked constitutes an evaluation as contemplated by section 21.355. 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 you have failed to

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<sup>3</sup>We assume the “representative sample” of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

demonstrate how any of the remaining information consists of documents evaluating the performance of a teacher or administrator for purposes of section 21.3 55 of the Education Code. Accordingly, none of the remaining information may be withheld under section 552.101 of the Government Code on that basis.

Section 552.116 of the Government Code provides as follows:

(a) An audit working paper of an audit of the state auditor or the auditor of a state agency, an institution of higher education as defined by Section 61.003, Education Code, a county, a municipality, a school district, or a joint board operating under Section 22.074, Transportation Code, including any audit relating to the criminal history background check of a public school employee, is excepted from the requirements of Section 552.021. If information in an audit working paper is also maintained in another record, that other record is not excepted from the requirements of Section 552.021 by this section.

(b) In this section:

(1) "Audit" means an audit authorized or required by a statute of this state or the United States, the charter or an ordinance of a municipality, an order of the commissioners court of a county, a resolution or other action of a board of trustees of a school district, including an audit by the district relating to the criminal history background check of a public school employee, or a resolution or other action of a joint board described by Subsection (a) and includes an investigation.

(2) "Audit working paper" includes all information, documentary or otherwise, prepared or maintained in conducting an audit or preparing an audit report, including:

(A) intra-agency and interagency communications; and

(B) drafts of the audit report or portions of those drafts.

Gov't Code § 552.116. You state the remaining documentation consists of information "related to the reporting and investigation of allegations that [district educators] may have incorrectly administered the annual, state-wide STAAR test." You further state the district "investigated the allegations and reported them to the Texas Education Agency (the "TEA") for audit and further investigation as required by law." Thus, we understand you to assert the remaining information constitutes audit working papers. However, section 552.116 is intended to protect the auditor's interests. The information at issue is maintained by the district, who we understand is the auditee in this instance. As the auditee, the district cannot assert section 552.116 in order to protect its own interest in withholding the information. We

note this office has received no arguments from the TEA seeking to withhold the information at issue under section 552.116 of the Government Code. Accordingly, we conclude the district may not withhold the remaining information under section 552.116 of the Government Code.

In summary, 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. 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,



Joseph Behnke  
Assistant Attorney General  
Open Records Division

JB/som

Ref: ID# 534629

Enc. Submitted documents

c: Requestor  
(w/o enclosures)