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ATTORNEY GENERAL OF TEXAS

January 25, 2016

Mr. Ricardo R. Lopez
Counsel for the North East Independent School District
Schulman, Lopez, Hoffer & Adelstein, L.L.P.
517 Soledad Street
San Antonio, Texas 78205-1508

OR2016-01773

Dear Mr. Lopez:

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# 595664.

The North East Independent School District (the "district"), which you represent, received a request for information related to a named district employee, including his current position with the district and a specified discipline file. You state the district is withholding student-identifying information pursuant to the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code.¹ 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. Section 552.101 encompasses section 261.201 of the Family Code, which provides, in part:

(a) [T]he following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for

¹The 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>.

purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under [chapter 261 of the Family Code] and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under [chapter 261 of the Family Code] or in providing services as a result of an investigation.

Fam. Code § 261.201(a); *see also id.* §§ 101.003(a) (defining “child” for purposes of this section as person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes), 261.001(1), (4) (defining “abuse” and “neglect” for purposes of Family Code ch. 261). We note the district is not an agency authorized to conduct an investigation under chapter 261 of the Family Code. *See id.* § 261.103 (listing agencies that may conduct child abuse investigations). Upon review, we find the information submitted as Exhibit C was obtained from the Texas Department of Family and Protective Services and was used or developed in an investigation of alleged or suspected child abuse under chapter 261 of the Family Code. Thus, the district must withhold Exhibit C in its entirety under section 552.101 of the Government Code in conjunction with subsection 261.201(a)(2) of the Family Code.²

Section 552.101 of the Government Code also encompasses information protected by section 21.355 of the Education Code, which provides, in relevant part, “[a] document evaluating the performance of a teacher or administrator is confidential.” Educ. Code § 21.355(a). 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.). 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. Further, in *Open Records Decision No. 643*, we determined an “administrator” for purposes of section 21.355 means a person who is required to, and does in fact, hold an administrator’s certificate under subchapter B of chapter 21 of the Education

²As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

Code, and is performing the functions as an administrator, as that term is commonly defined, at the time of the evaluation. *Id.*

You argue the information submitted as Exhibit B consists of confidential evaluations of the named teacher by the district. You inform us the named teacher was certified as a teacher by the State Board of Educator Certification and was acting as a teacher at the time the evaluations were prepared. Upon review, we find 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, the remaining information at issue does not evaluate any employee for purposes of section 21.355. Thus, we find you have failed to demonstrate any of the remaining information at issue consists of documents evaluating the performance of a teacher or administrator for purposes of section 21.355 of the Education Code. Accordingly, none of the remaining information may be withheld under section 552.101 of the Government Code on that basis.

In summary, the district must withhold Exhibit C in its entirety under section 552.101 of the Government Code in conjunction with subsection 261.201(a)(2) of the Family Code. The district must withhold the information we marked in Exhibit B under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code and must release the remainder of Exhibit B.

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,



Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/som

Ref: ID# 595664

Enc. Submitted documents

c: Requestor
(w/o enclosures)