



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

July 28, 2016

Ms. Lauren M. Wood  
Counsel for the Frisco Independent School District  
Abernathy, Roeder, Boyd & Hullett, P.C.  
P.O. Box 1210  
McKinney, Texas 75070-1210

OR2016-16968

Dear Ms. Wood:

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# 620555.

The Frisco Independent School District (the "district"), which you represent, received two requests from the same requestor for certain summative annual appraisals. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. You also state you have notified the individuals to whom portions of the requested information relate pursuant to section 552.304 of the Government Code. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). We have considered the exception you claim and reviewed the submitted representative sample of information.<sup>1</sup>

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<sup>1</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.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” *Id.* § 552.101. Section 552.101 encompasses information protected by other statutes, including section 21.355 of the Education Code. Section 21.355 provides, in part, “[a] document evaluating the performance of a teacher or administrator is confidential.” *See* 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). We have determined that 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 engaged in the process of teaching, as that term is commonly defined, at the time of the evaluation. *See id.* at 4.

You assert the submitted information is confidential under section 21.355. You inform us the teachers at issue held the appropriate certifications under chapter 21 of the Education Code at the time the information at issue was created. Based on your representations and our review, we agree the submitted information constitutes evaluations as contemplated by section 21.355. Accordingly, the submitted information is generally confidential under section 21.355 of the Education Code.

However, we note section 21.352(c) of the Education Code specifically provides, “[e]ach teacher is entitled to receive a written copy of the evaluation on its completion.” Educ. Code § 21.352(c); *see id.* § 21.352(a) (prescribing appraisal process and performance criteria each school district shall use). The requestor is the authorized representative of one of the teachers whose evaluations are at issue. Therefore, if the evaluations we marked are of the type contemplated by section 21.352, then this requestor has a right of access to them under section 21.352(c) and the district may not withhold them under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code. However, if the marked evaluations are not of the type contemplated by section 21.352, the requestor does not have a right of access under section 21.352(c), and the district must withhold all of the evaluations under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code.

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,

A handwritten signature in black ink that reads "Britni Ramirez". The signature is written in a cursive style with a large, looping 'B' and 'R'.

Britni Ramirez  
Assistant Attorney General  
Open Records Division

BR/bhf

Ref: ID# 620555

Enc. Submitted documents

c: Requestor  
(w/o enclosures)