



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

August 23, 2016

Mr. Wayne D. Haglund  
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OR2016-19037

Dear Mr. Haglund:

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# 623883.

The Nacogdoches Independent School District (the "district"), which you represent, received a request for e-mail correspondence from a named individual to any member of the district's school board for a specified period of time. The district states it is redacting 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> The district states it has disclosed some of the requested information to the requestor, but claims the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the claimed exception 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. This section encompasses section 21.355 of the Education Code. Section 21.355(a) provides "[a] document evaluating the performance of a teacher or administrator is confidential." Educ. Code § 21.355(a). Additionally, the Third Court of Appeals has

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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: <https://www.texasattorneygeneral.gov/files/og/20060725usdoe.pdf>.

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.” *Abbott v. N. E. 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. See Open Records Decision No. 643 at 3 (1996). We also determined a “teacher” for purposes of section 21.355 means a person who (1) is required to and does in fact hold a teaching certificate under subchapter B of chapter 21 of the Education Code or a school district teaching permit under section 21.055 and (2) is engaged in the process of teaching, as that term is commonly defined, at the time of the evaluation. See *id.* at 4.

The district asserts some of the information at issue evaluates the performance of teachers who hold the appropriate certificates for the purpose of section 21.355. However, we find the district has not established any of the submitted information consists of “[a] document evaluating the performance of a teacher or administrator” as contemplated by section 21.355. Accordingly, we conclude the district has not established any of the submitted information is confidential under section 21.355, and the district may not withhold any of it under section 552.101 on that ground. Therefore, the district must release the submitted information.<sup>2</sup>

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,



James L. Coggeshall  
Assistant Attorney General  
Open Records Division

JLC/bhf

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<sup>2</sup>Because the requestor has a special right of access to some of the information being released, the district must again seek a decision from this office if it receives another request for the same information from another requestor.

Ref: ID# 623883

Enc. Submitted documents

c: Requestor  
(w/o enclosures)