



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

September 8, 1997

Ms. Jennifer W. Jacobs
Bracewell & Patterson, L.L.P.
Attorneys at Law
South Tower Pennzoil Place
711 Louisiana Street, Suite 2900
Houston, Texas 77002-2781

OR97-1999

Dear Ms. Jacobs:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 108895.

The Spring Independent School District (the "school district") received a request for eight categories of information regarding "standardized dress" issues. You claim that some of the requested information is excepted from disclosure under sections 552.101, 552.102, 552.103, and 552.107 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.¹

Section 552.101 of the Government Code excepts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. This section encompasses information protected by other statutes. Section 21.355 of the Education Code provides, "[a]ny document evaluating the performance of a teacher or administrator is confidential." This office recently interpreted this section to apply to any document that evaluates, as that term is commonly understood, the performance of a teacher or administrator. Open Records Decision No. 643 (1996). This office also concluded that a teacher is someone who is required to hold and does hold a certificate or permit required under chapter 21 of the Education Code and is teaching at the time of his or her evaluation. *Id.* Similarly, an administrator is someone who is required to hold and does hold a certificate

¹In response to this request for information you have submitted information to this office which appears to be responsive only to categories 3 and 6 of the request. We therefore assume that you have released the remaining requested information.

required under chapter 21 of the Education Code and is administering at the time of his or her evaluation. *Id.* Based on the reasoning set out in Open Records Decision No. 643 (1996), we conclude that the “Administrative Performance Evaluation[s]” submitted as Exhibit “B” are confidential under section 21.355 of the Education Code. Therefore, pursuant to section 552.101 of the Government Code, the school district must withhold these documents.

Section 552.107(1) excepts information that an attorney cannot disclose because of a duty to his client. In Open Records Decision No. 574 (1990), this office concluded that section 552.107 excepts from public disclosure only “privileged information,” that is, information that reflects either confidential communications from the client to the attorney or the attorney’s legal advice or opinions; it does not apply to all client information held by a governmental body’s attorney. Open Records Decision No. 574 (1990) at 5. When communications from attorney to client do not reveal the client’s communications to the attorney, section 552.107 protects them only to the extent that such communications reveal the attorney’s legal opinion or advice. *Id.* at 3. In addition, basically factual communications from attorney to client, or between attorneys representing the client, are not protected. *Id.* We find that the two letters submitted as Exhibit “C” reveal the attorney’s legal opinion or advice and, therefore, may be withheld under section 552.107.²

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,



Vickie Prehoditch
Assistant Attorney General
Open Records Division

VDP/alg

Ref: ID# 108895

Enclosures: Submitted documents

²Because we are able to make a determination under sections 552.101 and 552.107, we do not address the applicability of your other claimed exceptions.

cc: Mr. David Wukoson
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(w/o enclosures)

