



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

February 5, 1998

Mr. S. Stephen Hilmy
Gary, Thomasson, Hall & Marks, P.C.
P.O. Box 2888
Corpus Christi, Texas 78403

OR98-0358

Dear Mr. Hilmy:

You ask this office to reconsider our ruling in Open Records Letter No. 97-2633 (1997). Your request for reconsideration was assigned ID# 113055.

You represent Del Mar College (the "college"). The college received a request from an employee to release to her and to her attorney information pertaining to the employee and her grievances. In Open Records Letter No. 97-2633 (1997), we concluded in part that the college could not withhold certain records under section 21.355 of the Education Code. In your request for reconsideration, you ask us to clearly state our reasons as to why section 21.355 does not render portions of the submitted records confidential.

In your original request for a ruling to this office, you asserted that a page from a memorandum is protected from disclosure under section 552.101 of the Government Code, in conjunction with section 21.355 of the Government Code. Section 552.101 provides an exception from disclosure for information made confidential by law. Section 21.355 of the Education Code provides, "A document evaluating the performance of a teacher or administrator is confidential." You assert that this provision is applicable to a junior college district by virtue of section 130.084 of the Education Code. Section 130.084 reads as follows:

The board of trustees of junior college districts shall be governed in the establishment, management and control of the junior college by the general law governing the establishment, management and control of independent school districts insofar as the general law is applicable.

By its terms, section 130.084 effects only the authority of junior college trustees to direct a junior college. *See San Antonio Union Junior College Dist. v. Daniel*, 206 S.W.2d 995 (Tex. 1947). Thus, this office has applied section 130.084 and its predecessor to confer various school district powers on junior college trustees. *See, e.g., Attorney General Opinions*

DM-178 (1992) (power to borrow money secured by delinquent maintenance tax revenues under Educ. Code § 20.45), M-878 (1971) (power to issue time warrants to repair, renovate, and equip school buildings under Educ. Code § 20.43), M-700 (1970) (power to exercise right of eminent domain under Educ. Code § 23.31). We do not believe a statute that makes certain information confidential, such as section 21.355 of the Education Code, bears on the trustees' direction of a junior college or in any way confers power on those trustees. Thus, section 21.355 does not affect the junior college's trustees authority to direct the college.

Furthermore, we do not believe section 21.355 is a general law that is "applicable" to colleges through section 130.084. Section 21.355 is part of subchapter H of the Education Code which sets forth the appraisal processes that relate to the accountability of public schools providing compulsory public education. We believe subchapter H is applicable only to public school districts and not to junior colleges.

Moreover, this office has limited the meaning of "teacher" and "administrator" for purposes of section 21.355. *See* Open Records Decision No. 643 (1996). The term "teacher" in section 21.355 means an individual who is required to hold and does hold a teaching certificate or school district teaching permit under subchapter B of chapter 21, and who is engaged in teaching at the time of the evaluation. *See id.* at 4. An "administrator" for purposes of section 21.355 is a person who is required to hold and does hold an administrator's certificate under subchapter B of chapter 21, and is currently performing the functions of an administrator. *See id.* In previous correspondence to this office, you stated that the employee requesting the information is "Director of Fiscal Services" at Del Mar College. We do not believe that the employee is a "teacher" or an "administrator" as those terms are used in section 21.355.

Thus, we believe that section 21.355 is inapplicable to a junior college through section 130.084 of the Education Code. Accordingly, the college may not withhold the requested information from the public pursuant to section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code. We, therefore, affirm Open Records Letter No. 97-2633 (1997)

If you have questions about this ruling, please contact our office.

Yours very truly,


Loretta R. DeHay
Deputy Chief
Open Records Division

LRD/rho

Ref: ID# 113055

cc: Mr. David Hughes
3765 South Alameda, Suite 318
Corpus Christi, Texas 78411