Office of the Attorney General • State of Texas
JOHN CORNYN

May 8, 2001

Ms. JoAnn S. Wright
Walsh, Anderson, Brown, Schulze & Aldridge, P.C.
Attorneys at Law
P.O. Box 168046
Irving, Texas 75016-8046

OR2001-1873

Dear Ms. Wright:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 146926.

The Venus Independent School District (the "school district"), which you represent, received a request for audits, minutes, the job duties of certain positions, and evaluations of the school board and the school superintendent. You state that the school district will make some of the information available to the requestor. However, you claim that the requested evaluations of the school board and the superintendent are excepted from disclosure under sections 552.101 and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We first note that the submitted information is subject to section 552.022(a)(1) of the Government Code. Section 552.022 provides in relevant part:

> (a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:
>
> > (1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108 . . . .

Gov't Code § 552.022(a)(1). The submitted information consists of two completed evaluations. Therefore, the evaluations may only be withheld if they are confidential under other law or if they are excepted under section 552.108 of the Government Code. You do

not raise section 552.108. Furthermore, section 552.111 is a discretionary exception and is not other law that makes information expressly confidential for purposes of section 552.022.[1] Thus, we address only your argument under section 552.101.

Section 552.101 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 document evaluating the performance of a teacher or administrator is confidential." This office 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). In that opinion, this office also concluded that an administrator is someone who is required to hold and does hold a certificate under chapter 21 of the Education Code and is performing the functions of an administrator at the time of his or her evaluation. *Id.* You indicate that the superintendent whose evaluation was requested holds an administrator's certificate. Based on your assertion, we agree that the evaluation of the superintendent is confidential under section 21.355 of the Education Code and therefore must be withheld under section 552.101 of the Government Code. You further assert that the requested evaluation of the school board is inherently an evaluation of the superintendent because the performance of the board is so closely tied to the performance of the superintendent. We do not believe that section 21.355 protects an evaluation that could, by implication, reveal the quality of the performance of a teacher or administrator. Rather, we believe the evaluation must explicitly evaluate the performance of a teacher or administrator in order to be confidential. *See* Educ. Code § 21.355; Open Records Decision No. 643 at 3 (1996); *see also* Open Records Decision No. 478 at 2 (1987). Because the school board evaluation does not explicitly evaluate the performance of the superintendent or any other teacher or administrator, it is not confidential under section 21.355 of the Education Code. Therefore, the school district must withhold the evaluation of the superintendent but release the evaluation of the board.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days.

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[1]Discretionary exceptions are intended to protect only the interests of the governmental body, as distinct from exceptions which are intended to protect information deemed confidential by law or the interests of third parties. *See, e.g.,* Open Records Decision Nos. 522 (1989) (discretionary exceptions in general); 473 (1987) (governmental body may waive section 552.111). Discretionary exceptions therefore do not constitute "other law" that makes information confidential.

Id. § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

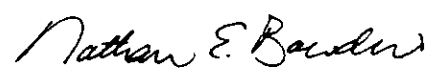
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Nathan E. Bowden
Assistant Attorney General
Open Records Division

NEB/sdk

Ref: ID# 146926

Encl: Submitted documents

cc: Ms. Cynthia Jones
P.O. Box 42
Venus, Texas 76084
(w/o enclosures)