



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 12, 2005

Ms. Beverly West Stephens, Esq.  
Gale, Wilson & Sanchez P.L.L.C.  
115 East Travis, Suite 618  
San Antonio, Texas 78205

OR2005-06146

Dear Ms. Stephens:

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# 227974.

The South San Antonio Independent School District (the "district"), which you represent, received a request for "scripting notes taking during the PDAS observation" of an individual on March 1 and April 13, 2005. You claim that the requested information is excepted from disclosure under section 552.111 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

We note that the submitted information may be excepted under section 552.101 of the Government Code, which excepts from required public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."<sup>1</sup> Section 552.101 encompasses section 21.355 of the Education Code, which provides that "[a] document evaluating the performance of a teacher or administrator is confidential." 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 (1996). In Open Records Decision No. 643, we determined that the word "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

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<sup>1</sup>Unlike discretionary exceptions to disclosure, the Office of the Attorney General will raise a mandatory exception like section 552.101 on behalf of a governmental body. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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 submitted information consists of evaluations for purposes of section 21.355. Thus, provided the employee at issue was required to hold and did hold the appropriate certificate and was teaching at the time of the submitted teaching evaluations, the submitted information is confidential under section 21.355, and the district must withhold it under section 552.101 of the Government Code. To the extent the submitted documents are not confidential under section 21.355, we will address your arguments under section 552.111 of the Government Code.

Section 552.111 excepts from disclosure “an interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency.” In Open Records Decision No. 615 (1993), this office reexamined the predecessor to the section 552.111 exception in light of the decision in *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.—Austin 1992, no writ), and held that section 552.111 excepts only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body. *See City of Garland v. Dallas Morning News*, 22 S.W.3d 351, 364 (Tex. 2000); *Arlington Indep. Sch. Dist. v. Tex. Attorney Gen.*, 37 S.W.3d 152 (Tex. App.—Austin 2001, no pet.). An agency’s policymaking functions do not encompass internal administrative or personnel matters; disclosure of information relating to such matters will not inhibit free discussion among agency personnel as to policy issues. ORD 615 at 5-6. After review of your arguments and the submitted information, we conclude that the documents at issue relate to personnel matters, and are not internal communications consisting of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body; therefore, the district may not withhold the submitted information under section 552.111.

To conclude, to the extent the employee at issue was required to hold and did hold the appropriate certificate and was teaching at the time of the submitted teaching evaluations, the submitted information is confidential under section 21.355 of the Education Code, and the district must withhold it under section 552.101 of the Government Code. If the information at issue is not confidential under section 21.355, the district must release it to the requestor.

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. *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).

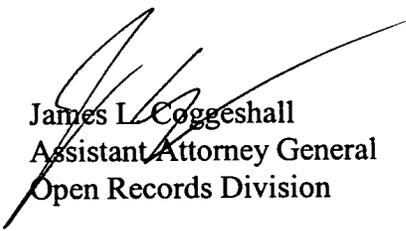
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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); *Tex. 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 Texas Building and Procurement 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,



James L. Coggeshall  
Assistant Attorney General  
Open Records Division

JLC/seg

Ref: ID# 227974

Enc. Submitted documents

c: Mr. Tom Cummins  
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(w/o enclosures)