



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 26, 2006

Mr. Michael J. Westergren  
Del Mar College  
101 Baldwin Blvd.  
Corpus Christi, Texas 78404-3897

OR2006-00903

Dear Mr. Westergren:

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# 240931.

Del Mar College (the "college") received a request for all evaluations of named teacher during a certain time period, along with the identities of others who had access to the same evaluations during a certain time period. You claim that the submitted evaluations are excepted from disclosure under sections 552.101 and 552.102 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that you have not submitted information regarding the identities of the people who had access to the evaluations during the requested time period for our review. As you have not submitted this information for our review, we assume you have released it to the extent that it existed at the time this request was received. If you have not released any such records, you must release them to the requestor at this time. *See Gov't Code §§ 552.301(a), .302.; see also Open Records Decision No. 664 (2000) (noting that if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible under circumstances).*

Next, we must address the college's obligations under section 552.301 of the Government Code. Subsections (a) and (b) of section 552.301 require a governmental body requesting an open records ruling from this office to "ask for the attorney general's decision and state the exceptions that apply within a reasonable time but not later than the 10th business day after the date of receiving the written request." Gov't Code § 552.301(a), (b). You did not raise section 552.101 until the fifteen-business-day deadline, when you submitted written

comments explaining why section 552.101 applied to the requested documents. However, this office has held that a compelling reason exists to withhold information when the information is confidential under other law or affects third party interests. *See* Open Records Decision No. 150 (1977). Because section 552.101 can constitute such a compelling reason, we will address the applicability of your arguments. On the other hand, while the college timely raised section 552.102 of the Government Code, you did not submit any arguments in support of that exception. *See* Gov't Code § 552.301(e)(1)(A) (governmental body must explain how claimed exception to disclosure applies). Thus, we find that the college has waived its section 552.102 claim.

Section 552.101 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, which provides that "[a] document evaluating the performance of a teacher or administrator is confidential." Educ. Code § 21.355. The college has submitted student evaluations of the named teacher. The college acknowledges that this office has issued previous rulings finding that section 21.355 does not apply to evaluations of junior college or community college teachers. However, the college asserts that the statutory construction and legislative history of section 21.355 indicate that the legislature intended the statute to apply to junior college and community college teachers.

This office has already conducted an analysis of the statutory construction of section 21.355. In Open Records Decision No. 643 (1996), this office found that the legislature did not define which teacher evaluations were confidential under section 21.355 and analyzed chapter 21 of the Education Code in order to determine the scope of section 21.355. In that opinion, we concluded that "the best definition of 'teacher' for purposes of section 21.355 is a person who is required to hold and does in fact hold a teaching certificate under subchapter B of chapter 21 or a school district teaching permit under section 21.055 of the Education Code[.]" *Id.* Although the college cites isolated provisions of chapter 21 of the Education Code in support of its interpretation of section 21.355, none of these provisions alter our analysis of the scope of confidentiality provided by section 21.355. Additionally, we note that the rules of statutory construction prohibit us from reading a section of a statute in isolation; rather, our determination should be based on the entire act. *Jones v. Fowler*, 969 S.W.2d 429, 432 (Tex. 1998). Accordingly, we do not find that the statutory construction supports the college's interpretation of section 21.355. *See generally* Open Records Decision No. 643.

You also argue that, for policy reasons, the protections of section 21.355 should be interpreted to extend to college teachers. Again, however, our analysis of section 21.355 determined that its confidentiality protections were limited to public school teachers. Further, statutory confidentiality requires express language that information is confidential; confidentiality will not be implied from a statutory structure. *See* Open Records Decision Nos. 658 at 4 (1998), 478 at 2 (1987) (statutory confidentiality requires express language

making certain information confidential or stating that information shall not be released to the public). Thus, the Office of the Attorney General cannot unilaterally create a confidentiality provision where one does not exist, nor can we distort the legislature's words in order to expand the protections of a confidentiality statute. *See* Gov't Code § 552.011 (defining the role of the attorney general under the Act).

Finally, you note that section 21.355 was cited in the dissent of *In re City of Georgetown*, 53 S.W.3d 328, 340 (Tex. 2001). In that opinion, a majority of the Texas Supreme Court held that provisions of the Texas Rules of Civil Procedure and Texas Rules of Evidence could make information confidential for purposes of section 552.022. *Id.* at 337. The author of the dissent argued that, for a statute to make information confidential under the Act, it must use express language, and cited to section 21.355 as an example of the legislature using such clear and unambiguous language. *Id.* at 340. The college does not explain, and we cannot determine, how the dissent in *In re City of Georgetown* is applicable to the statutory construction of section 21.355 nor how that analysis applies to the requested records. Thus, the college may not withhold the submitted evaluations under section 552.101 in conjunction with section 21.355 of the Education Code. As you raise no other exceptions to disclosure, the evaluations must be released.

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); *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 Office of the Attorney General 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,



José Vela III  
Assistant Attorney General  
Open Records Division

JV/krl

Ref: ID# 240931

Enc. Submitted documents

c: Requestors  
c/o Michael J. Westergren  
Del Mar College  
101 Baldwin Blvd.  
Corpus Christi, Texas 78404-3897  
(w/o enclosures)