



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 20, 2006

Ms. Ann Forbes
Paralegal
Fort Worth Independent School District
1000 North University Drive
Fort Worth, Texas 76107

OR2006-07872

Dear Ms. Forbes:

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# 254707.

The Fort Worth Independent School District (the "district") received a request for "(1) [a]ny and all summary totals of the recent climate surveys given to the employees of the [district,] (2) [a]ny reports derived from the information taken from the individual surveys[, and] (3) [a]ny and all comments from the individual surveys." You claim that the requested information is excepted from disclosure under sections 552.101 and 552.116 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

Initially, we note that you have only submitted information responsive to categories two and three for our review. To the extent any additional responsive information existed on the date the district received this request, we assume you have released it to the requestor. If you have not released any such information, you must release it at this time. *See Gov't Code §§552.301(a), .302; see also Open Records Decision No. 664 (2000) (if governmental body*

¹ We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See Open Records Decision Nos. 499 (1988), 497 (1988).* This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

concludes that no exceptions apply to requested information, it must release information as soon as possible).

Section 552.101 of the Government Code 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 information protected by other statutes. Section 21.355 of the Education Code provides that “[a] document evaluating the performance of a teacher or administrator is confidential.” Educ. Code § 21.355. This office has 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 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 required under chapter 21 of the Education Code and is administering at the time of his or her evaluation. *Id.*

You contend that the submitted school climate teacher surveys evaluate district administrators in the performances of their duties. After reviewing the information at issue, we disagree that the information you have submitted constitutes evaluations for purposes of section 21.355. Although a portion of the survey questions and staff comments pertain to district administrators, the questions asked of the staff and their related comments cannot be categorized or perceived as an evaluation of the performance of a principal or any other district teacher or administrator. Thus, we conclude that this information is not made confidential under section 21.355 of the Education Code. We also note the submitted “Administrative Employee Appraisal Report” consists of blank evaluation forms that do not actually evaluate the performance of a teacher or administrator.² Accordingly, we conclude that this information is not confidential under section 21.355.

In addition, you raise section 552.116 of the Government Code for the requested information. Section 552.116 of the Government Code provides in relevant part:

(a) An audit working paper of an audit of the state auditor or the auditor of a state agency, an institution of higher education as defined by Section 61.003, Education Code, a county, a municipality, or a joint board operating under Section 22.074, Transportation Code, is excepted from [public disclosure]. If information in an audit working paper is also maintained in another record, that other record is not excepted from [public disclosure] by this section.

²You state that the Administrative Employee Appraisal Report “will be prepared using the information gathered by the survey.” We note the Act does not require a governmental body to disclose information that did not exist when the request for information was received. *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex.App.—San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986).

Gov't Code § 552.116(a). Section 552.116 only excepts the audit working papers of certain types of entities. Since the district is not one of these entities, section 552.116 is inapplicable to the district. Therefore, we conclude that the district may not withhold any of the requested information under section 552.116 of the Government Code. As you raise no further exceptions to disclosure, the district must release the requested information.

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. 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,



Anne Prentice
Assistant Attorney General
Open Records Division

AP/sdk

Ref: ID# 254707

Enc. Submitted documents

c: Mr. Larry Shaw
Executive Director
United Educators Association
4900 S.E. Loop 820
Fort Worth, Texas 76140
(w/o enclosures)