



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 24, 2006

Ms. Chris G. Elizalde
Waslsh, Anderson, Brown, Schulze, & Aldridge, P.C.
P. O. Box 2156
Austin, Texas 78768

OR2006-09748

Dear Ms. Elizalde:

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# 258024.

The College Station Independent School District (the "district"), which you represent, received a request for 1) a copy of the superintendent's performance evaluation, response, and contract; and 2) any correspondence between board members and/ or administrators regarding the appointment of an acting superintendent. You state that the district has released the requested contract and correspondence regarding the appointment of the acting superintendent. You claim that the superintendent's evaluation and his response are excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note that the evaluation was the subject of a previous ruling issued by this office as Open Records Letter No. 2006-09217 (2006). As we have no indication that the law, facts, and circumstances on which the prior ruling was based have changed, the district must continue to rely on this ruling as a previous determination and withhold the evaluation at issue in accordance with Open Records Letter No. 2006-09217. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in a prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

Section 552.101 excepts from public disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. This exception encompasses information that other statutes make confidential. Section 21.355 provides that “[a] document evaluating the performance of a teacher or administrator is confidential.” Educ. Code § 21.355. 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 or an administrator. *See* Open Records Decision No. 643 (1996). In Open Records Decision No. 643, we determined that for purposes of section 21.355, the word “teacher” means a person who is required to and does in fact hold a teaching certificate under subchapter B of chapter 21 of the Education Code or a school district teaching permit under section 21.055 and who is engaged in the process of teaching, as that term is commonly defined, at the time of the evaluation. *See* ORD 643 at 4. We also determined that the word “administrator” in section 21.355 means a person who is required to and does in fact hold an administrator’s certificate under subchapter B of chapter 21 of the Education Code and is performing the functions of an administrator, as that term is commonly defined, at the time of the evaluation. *Id.*

The information submitted as Exhibit 3 contains the superintendent’s response to his evaluation made by the district’s Board of Trustees. You state that the superintendent was employed and certificated as an administrator when the submitted information was created. You state that the superintendent’s response references the evaluation itself so specifically as to render the response a part of his evaluation. Based on your representation and our review, we agree that the superintendent’s response contains numerous references and comments regarding his evaluation and that the release of any portion of his response would necessarily reveal the district’s evaluation. Therefore, we conclude that the superintendent’s response is confidential under section 21.355 of the Education Code and must be withheld in its entirety under section 552.101 of the Government Code.

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,



Candice M. De La Garza
Assistant Attorney General
Open Records Division

CMD/krl

Ref: ID# 258024

Enc. Submitted documents

c: Mr. Craig Kapitan
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(w/o enclosures)