



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 10, 2007

Mr. Paul A. Lamp
Feldman & Rogers, L.L.P.
Counsel for Pasadena Independent School District
5718 Westheimer Road, Suite 1200
Houston, Texas 77057

OR2007-00410

Dear Mr. Lamp:

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# 268814.

The Pasadena Independent School District (the "district"), which you represent, received a request for information pertaining to a former district employee. You state that some of the requested information has been provided to the requestor. You claim that the remaining requested information is excepted from disclosure under section 552.101 of the Government Code.¹ We have considered the exception you claim and reviewed the submitted information.

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 section 21.355 of the Education Code, which

¹Although you also assert that the submitted information is excepted from disclosure under section 552.022 of the Government Code, we note that this section is not an exception to public disclosure. Rather, section 552.022 specifies 18 categories of information that must be released to the public, unless the information is expressly confidential under other law or, in the case of section 552.022(a)(1), is excepted from disclosure under section 552.108. See Gov't Code § 552.022(a).

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 a “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 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. If the former employee held a teacher’s certificate or permit and was performing the functions of a teacher at the time of the evaluations, the submitted information is confidential under section 21.355 of the Education Code and thus must be withheld from disclosure under section 552.101 of the Government Code. *See Abbott v. North East Indep. Sch. Dist.*, No. 03-04-00744-CV (Tex. App.—Austin 2006, no pet.) (concluding that written reprimand constitutes evaluation for purposes of section 21.355 of Educ. Code). To the extent that the employee does not satisfy these criteria, the information is not confidential under section 21.355; thus, it may not be withheld under section 552.101 on that basis, and must be released 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).

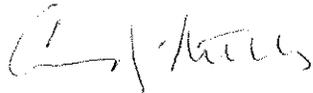
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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); *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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/eb

Ref: ID# 268814

Enc. Submitted documents

c: Mr. Brian K. Riggs
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(w/o enclosures)