



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 9, 2007

Dr. Leonard Merrell
Superintendent
Katy Independent School District
P.O. Box 159
Katy, Texas 77492-0159

OR2007-10215

Dear Mr. Merrell:

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# 286248.

The Katy Independent School District (the "district") received a request for a letter of reference pertaining to the requestor. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. 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 § 522.101. This section encompasses information protected by other statutes. You indicate that the submitted information is excepted from disclosure under section 4.001(b) of the Education Code, which provides in relevant part:

(b) The objectives of public education are:

OBJECTIVE 6: Qualified and highly effective personnel will be recruited, developed, and retained.

...

OBJECTIVE 8: School campuses will maintain a safe and disciplined environment conducive to student learning.

Educ. Code § 4.001(b). Section 4.001 lists the mission and objectives of the public education system of this state. This section does not expressly make any information confidential. *See* Open Records Decision No. 478 at 2 (1987) (statutory confidentiality requires express language making information confidential or stating that information shall not be released to the public). Accordingly, the district may not withhold the submitted information under section 552.101 of the Government Code in conjunction with section 4.001 of the Education Code.

Section 552.101 also encompasses section 21.355 of the Education Code, which provides, “[a] document evaluating the performance of a teacher or administrator is confidential.” Educ. Code § 21.355. This office 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.* You assert that the submitted information, which consists of an “Applicant Reference Form,” constitutes a performance evaluation of a teacher. We note, however, that this document is in the form of a letter of recommendation, rather than a true performance evaluation. We therefore find that the submitted “Applicant Reference Form” does not consist of the type of document made confidential by section 21.355. Consequently, the district may not withhold this document pursuant to section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code. As you raise no other exceptions, the submitted information 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

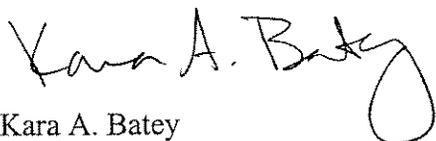
will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to 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,



Kara A. Batey
Assistant Attorney General
Open Records Division

KAB/jh

Ref: ID# 286248

Enc. Submitted documents

c: Ms. Lisa Key
301 Green Lane Trail
Whitehouse, Texas 75791
(w/o enclosures)