



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 31, 2008

Ms. Jo Ann Collier
Feldman, Rogers, Morris & Grover
517 Soledad Street
San Antonio, Texas 78205-1508

OR2008-04192

Dear Ms. Collier:

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# 306130.

The North East Independent School District (the "district"), which you represent, received a request for information contained in the personnel files of nine individuals. You state that you have released some of the requested information. You claim that the submitted 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 § 552.101. Section 552.101 encompasses information protected by other statutes, such as section 21.355 of the Education Code. 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 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 determined 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 the evaluations. *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 serving as an administrator at the time of the evaluation. *Id.*

You claim that Exhibit B includes evaluations of the named individuals that are confidential under section 21.355. We note that the submitted evaluation in Exhibit B-2 pertains to an individual who “was a school nurse at NEISD.” You contend, however, that a nurse qualifies as a teacher for purposes of section 21.355 of the Education Code. You rely on a definition of the word “teacher” found in section 21.201 of the Education Code. Section 21.201 provides in part:

In this subchapter:

- (1) “Teacher” means a superintendent, principal, supervisor, classroom teacher, counselor, or other full-time professional employee who is required to hold a certificate issued under Subchapter B or a nurse.[]

Educ. Code § 21.201(1). We note that, by its express language, the definition of “teacher” in section 21.201(1) applies only “[i]n this subchapter[.]” Section 21.201 is found in subchapter E of chapter 21 of the Education Code, “Term Contracts.” Section 21.355, which provides for the confidentiality of an evaluation of a teacher or administrator, is found in subchapter H, “Appraisals and Incentives.” Thus, section 21.201 does not define the word “teacher” for the purposes of section 21.355. Consequently, we find that section 21.355 of the Education Code is not applicable to a nurse, unless the nurse in question would otherwise qualify as a teacher under section 21.355. *See* Educ. Code § 21.355; Open Records Decision No. 643 at 4. You do not indicate that nurse in question would otherwise qualify as a teacher for the purposes of section 21.355. We therefore conclude that Exhibit B-2 is not confidential under section 21.355 of the Education Code, and thus is not excepted from disclosure under section 552.101 of the Government Code. *See also* Open Records Decision Nos. 658 at 4 (1998) (statutory confidentiality provision must be express, and confidentiality requirement will not be implied from statutory structure), 649 at 3 (1996) (language of confidentiality provision controls scope of its protection), 478 at 2 (1987) (statutory confidentiality requires express language making certain information confidential or stating that information shall not be released to public).

You state that the remaining individuals were performing the functions of a teacher at the time of the evaluation. However, you do not indicate whether the remaining individuals held a teacher’s certificate or permit under chapter 21 of the Education Code at the time of the evaluations. To the extent the individuals in question did hold a teacher’s certificate or permit at the time of the evaluation, the district must withhold the remaining information in Exhibit B under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code. *North East Indep. Sch. Dist. v. Abbott*, 212 S.W.3d 364 (Tex. App.—Austin 2006, no pet.) (finding that a principal’s written memorandum to a teacher constituted an evaluation for purposes of section 21.355 where “it reflects the principal’s judgment regarding [a teacher’s] actions, gives corrective direction, and provides for further review”). To the extent the individuals in question did not hold a teacher’s certificate or permit at the time of the evaluation, the information at issue is not confidential under

section 21.355 of the Education Code and may not be withheld under section 552.101 of the Government Code.¹

In summary, the district must release Exhibit B-2 to the requestor. If the individuals in question did hold a teacher's certificate or permit at the time of the evaluation, the district must withhold the remaining information in Exhibit B under section 552.101 of the Government Code in conjunction with section 21.355 of the Education 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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, 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).

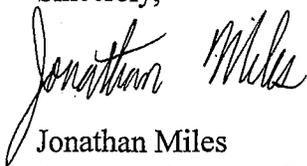
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can challenge that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

¹The submitted information contains social security numbers. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act.

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,



Jonathan Miles
Assistant Attorney General
Open Records Division

JM/jh

Ref: ID# 306130

Enc. Submitted documents

c: Mr. Brian Collister
News 4 WOAI Trouble Shooters
c/o Ms. Jo Ann Collier
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(w/o enclosures)