



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

November 3, 2008

Ms. Emily Hollenbeck
Henslee Schwartz
306 West 7th Street, Suite 1045
Fort Worth, Texas 76102

OR2008-14954

Dear Ms. Hollenbeck:

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# 326733.

The Weatherford Independent School District (the "district"), which you represent, received a request for all information related to a named employee. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.102 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from required 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 another statute makes confidential. You contend the submitted evaluations contained in Exhibit A are confidential under section 21.355 of the Education Code, which 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 decision, we determined that the word "teacher," for purposes of section 21.355, is 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* Open Records Decision No. 643 at 4. We also concluded 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.

In this instance, you inform us the submitted evaluations relate to a special education counselor rather than a teacher or an administrator. We note that section 21.356 of the Education Code separately provides for evaluations of school counselors.¹ See Educ. Code § 21.356 (stating commissioner of Education shall develop evaluation form providing for use by a district in evaluating school counselors). Because the submitted evaluations pertain to a counselor rather than a teacher or administrator, we find that section 21.355 of the Education Code is not applicable to the submitted evaluations. Thus, the evaluations are not excepted from disclosure under section 552.101 of the Government Code. See Educ. Code § 21.355; Open Records Decision No. 643 at 4. See also Educ. Code § 21.003(a) (person may not be employed as a teacher, teacher intern or teacher trainee, librarian, education aide, administrator, or counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by Subchapter B).

You raise section 552.102 of the Government Code for the submitted transcripts contained in Exhibit B. Section 552.102(b) excepts from disclosure all information from transcripts of professional public school employees other than the employee's name, the courses taken, and the degree obtained. Gov't Code § 552.102(b); Open Records Decision No. 526 (1989). Thus, with the exception of the employee's name, courses taken, and degree obtained, which you must release, we find that the submitted transcripts must be withheld pursuant to section 552.102(b) of the Government Code. As you raise no other arguments against the disclosure of the remaining information, it must be released.

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). If the governmental body does not file suit over 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

¹We note that neither section 21.356 nor any other provision of subchapter H of the Education Code provides for the confidentiality of an evaluation of a school counselor.

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).

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,



Jordan Hale
Assistant Attorney General
Open Records Division

JH/jb

Ref: ID# 326733

Enc. Submitted documents

c: Mr. Ruben Gonzalez
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(w/o enclosures)