



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 29, 2009

Ms. Ylise Janssen
Senior School Law Attorney
Office of the General Counsel
Austin Independent School District
1111 West 6th Street
Austin, Texas 78703-5338

OR2009-07330

Dear Ms. Janssen:

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# 344804.

The Austin Independent School District (the "district") received a request for the following information pertaining to the requestor: (1) "reference letters of recommendation[.]" (2) "letters of evaluation from teachers[.]" (3) evaluations from a named individual while the requestor worked at a specified school, and (4) "teacher evaluations." You claim that the submitted information, which consists of recommendation forms submitted to the district as part of the requestor's job application, is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.¹

¹To the extent additional responsive information existed on the date the district received the instant request, we assume that information has been released to the requestor. *See* Educ. Code § 21.352(c) (entitling teacher to copy of section 21.352 evaluation upon completion). If the district has not released any such information, it must do so at this time. *See* Gov't Code §§ 552.301(a), .302; Open Records Decision No. 664 (2000) (noting that if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible under circumstances).

You assert that the requestor waived his right to the submitted records when he signed a statement regarding confidentiality of the information. We note that information is not confidential under the Act simply because the party that submitted the information anticipates or requests that it be kept confidential. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 677 (Tex. 1976). In other words, a governmental body cannot overrule or repeal provisions of the Act by agreement or contract. *See* Attorney General Opinion JM-672 (1987); Open Records Decision Nos. 541 at 3 (1990) (“[T]he obligations of a governmental body under [the Act] cannot be compromised simply by its decision to enter into a contract.”), 203 at 1 (1978) (mere expectation of confidentiality by person supplying information does not satisfy requirements of statutory predecessor to Gov’t Code § 552.110). Therefore, unless the submitted information falls within an exception to disclosure, it must be released, notwithstanding any expectation or agreement to the contrary.

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 made confidential by other law, including 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 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.

You state that the submitted information consists of teacher evaluations for the purposes of section 21.355, and that the requestor held the appropriate certification under subchapter B of chapter 21 of the Education Code. Based upon your representations and our review, we conclude that the submitted information is confidential under section 21.355 of the Education Code.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General’s Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public

information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/dls

Ref: ID# 344804

Enc. Submitted documents

c: Requestor
(w/o enclosures)