



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 8, 2009

Mr. Humberto F. Aguilera  
Escamilla & Poneck, Inc.  
Attorney for San Antonio Independent School District  
P.O. Box 200  
San Antonio, Texas 78291-0200

OR2009-09390

Dear Mr. Aguilera:

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# 348302.

The San Antonio Independent School District (the "district"), which you represent, received a request for information regarding a specified investigation into possible TAKS testing violations. You state the district redacted some of the submitted information pursuant to the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code.<sup>1</sup> You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.116 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note, and the submitted information reflects, that the submitted information is subject to section 552.022 of the Government Code. Section 552.022 states in relevant part:

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<sup>1</sup>We note the United States Department of Education Family Policy Compliance Office (the "DOE") has informed this office FERPA does not permit state and local educational authorities to disclose to this office, without parental or student consent, unredacted, personally identifiable information contained in education records for the purpose of our review in the open records ruling process under the Act. The DOE has determined FERPA determinations must be made by the educational authority in possession of the education records. We have posted a copy of the letter from the DOE to this office on the Attorney General's website: <http://www.oag.state.tx.us/open/20060725usdoe.pdf>.

(a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

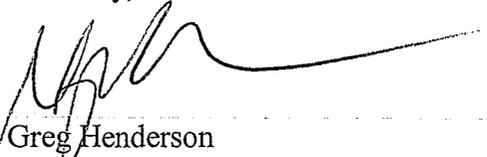
Gov't Code § 552.022(a)(1). Upon review, we find the submitted information is part of a concluded investigation made by the district. Pursuant to section 552.022(a)(1) of the Government Code, a completed investigation is expressly public unless it either is excepted under section 552.108 of the Government Code or is expressly confidential under other law. Section 552.116 of the Government Code is a discretionary exception that protects a governmental body's interest and may be waived. *See* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). As such, section 552.116 is not other law that makes information confidential for the purposes of section 552.022. Thus, you may not withhold the information in Exhibit B on this basis. However, because section 552.101 is other law for purposes of section 552.022, we will consider your argument under this exception.

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 information protected by other statutes. Section 21.355 of the Education Code provides that "[a] document evaluating the performance of a teacher or administrator is confidential." 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 administrator. *See* Open Records Decision No. 643 (1996). In Open Records Decision No. 643, this office also concluded that an administrator is someone who is required to hold and does hold a certificate required under chapter 21 of the Education Code and is administering at the time of his or her evaluation. *Id.* at 4. You contend that a portion of the submitted information constitutes an evaluation for the purposes of section 21.355 of the Education Code. You state that the employee at issue held an administrator certificate under subchapter B of chapter 21 of the Education Code and was performing the functions of an administrator at the time of the evaluation. Upon review, we agree that the information we have marked consists of an evaluation of the administrator at issue. Accordingly, we find that the information we have marked is subject to section 21.355 of the Education Code, and the district must withhold the marked information under section 552.101 of the Government Code. As you raise no further exceptions to the disclosure of the remaining information, it must be released.

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](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,



Greg Henderson  
Assistant Attorney General  
Open Records Division

GH/rl

Ref: ID#348302

Enc. Submitted documents

c: Requestor  
(w/o enclosures)