



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 24, 2009

Ms. Laura C. Rodriguez
Walsh, Anderson, Brown, Aldridge, & Gallegos, P.C.
Attorneys at Law
P.O. Box 460606
San Antonio, Texas 78246

OR2009-10300

Dear Ms. Rodriguez:

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# 350067.

The Northside Independent School District (the "district"), which you represent, received a request for the reference response forms in a specified job applicant's file. You claim that the submitted response forms are excepted from disclosure under section 552.111 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note that all but one of the submitted response forms constitute completed evaluations subject to 552.022(a)(1) of the Government Code. Section 552.022(a)(1) provides for required public disclosure of "a completed report, audit, evaluation, or investigation made of, for, or by a governmental body[,]" unless the information is expressly confidential under other law or excepted from disclosure under section 552.108 of the Government Code. Gov't Code § 552.022(a)(1). Although you seek to withhold this information under section 552.111 of the Government Code, this section is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See* Open Records Decision Nos. 470 at 7 (1987) (statutory predecessor to section 552.111 subject to waiver), 665 at 2 n.5 (2000) (discretionary exceptions generally). As such, section 552.111 is not other law that makes information confidential for the purpose of section 552.022. Therefore, the district may not withhold this information under

section 552.111 of the Government Code. However, as section 552.101 of the Government Code can make information confidential that is otherwise subject to section 552.022(a)(1), we will consider this exception for the completed response forms.¹ We will also consider section 552.111 for the incomplete response form that is not subject to section 552.022(a)(1).

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, 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 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 concluded that a "teacher" for purposes of section 21.355 means a person who (1) is required to, and does in fact, hold a certificate or permit required under chapter 21 of the Education Code and (2) is teaching at the time of his or her evaluation. *Id.*

We have marked documents in the submitted information that constitute evaluations for the purposes of section 21.355 of the Education Code. You do not indicate whether the individual whose evaluations are at issue held a teacher's certificate or permit under chapter 21 of the Education Code and was performing the functions of a teacher at the time of the evaluations. Therefore, we must rule conditionally. To the extent the individual in question held a teacher's certificate or permit and was functioning as a teacher at the time of the evaluation, the district must withhold the documents we have marked under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code. To the extent the individual in question did not hold a teacher's certificate or permit or was not functioning as a teacher at the time of the evaluation, then 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. We find that the remainder of the completed response forms do not constitute evaluations for the purpose of section 21.355 and may not be withheld on this basis. As you raise no other exceptions for this information it must be released.

We will now address your argument under section 552.111 for the incomplete response form that is not subject to section 552.022(a)(1). Section 552.111 of the Government Code excepts from disclosure "an interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency." This exception encompasses the deliberative process privilege. *See* Open Records Decision No. 615 at 2 (1993). The purpose of section 552.111 is to protect advice, opinion, and recommendation in the

¹The Office of the Attorney General will raise a mandatory exception like section 552.101 on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

decisional process and to encourage open and frank discussion in the deliberative process. *See Austin v. City of San Antonio*, 630 S.W.2d 391, 394 (Tex. App.—San Antonio 1982, no writ); Open Records Decision No. 538 at 1-2 (1990).

In Open Records Decision No. 615, this office re-examined the statutory predecessor to section 552.111 in light of the decision in *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.—Austin 1992, no writ). We determined that section 552.111 excepts from disclosure only those internal communications that consist of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body. *See* Open Records Decision No. 615 at 5. A governmental body's policymaking functions do not encompass routine internal administrative or personnel matters, and disclosure of information about such matters will not inhibit free discussion of policy issues among agency personnel. *See id.*; see also *City of Garland v. Dallas Morning News*, 22 S.W.3d 351 (Tex. 2000) (section 552.111 not applicable to personnel-related communications that did not involve policymaking). A governmental body's policymaking functions do include administrative and personnel matters of broad scope that affect the governmental body's policy mission. *See* Open Records Decision No. 631 at 3 (1995).

You contend that the remaining information contains recommendations and opinions which play a role in the district's decision and policy making matters and that release of this information would impair the district's ability to obtain such information in the future. However, upon review, we find that this information does not constitute advice, opinion or recommendations for the purpose of section 552.111. *See* Open Records Decision Nos. 615, 631. Accordingly, this information may not be withheld pursuant to section 552.111 of the Government Code.

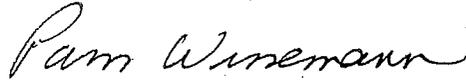
In summary, to the extent the individual in question held a teacher's certificate or permit and was functioning as a teacher at the time of the evaluation, the district must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code. If, however, the individual in question did not hold a teacher's certificate or permit or was not functioning as a teacher at the time of the evaluation, then this information is not confidential under section 21.355 of the Education Code and may not be withheld under section 552.101 of the Government Code and must be released along with the remaining information.

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,

A handwritten signature in cursive script that reads "Pam Wissemann".

Pamela Wissemann
Assistant Attorney General
Open Records Division

PFW/dls

Ref: ID# 350067

Enc. Submitted documents

c: Requestor
(w/o enclosures)