



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 24, 2009

Mr. Deron Robinson
Henslee Schwartz LLP
306 West 7th Street, Suite 1045
Fort Worth, Texas 76102

OR2009-11863

Dear Mr. Robinson:

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# 353232.

The Red Oak Independent School District (the "district"), which you represent, received a request for a statement read to the district's school board during a specified meeting and any evidence in the district's possession used to support an allegation made against the requestor by the district's assistant superintendent. You claim the submitted statement is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information. We have also received and considered comments submitted by the requestor. *See* Gov't Code § 552.304 (interested party may submit written comments regarding availability of requested information).

Initially, we note you have not submitted information responsive to the request for evidence used to support a specified allegation. To the extent information responsive to this aspect of the request existed on the date the district received this request, we assume you have released it. If you have not released any such information, you must do so at this time. *See id.* §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

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, 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 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. We also determined 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.*

You assert the submitted statement is confidential under section 21.355. Although the statement pertains to a district employee, we note the employee is the district’s police department’s chief of police. Section 21.355 protects evaluations of only teachers and administrators who held the proper certifications and were performing the functions of teachers and administrators at the times of the evaluations. Therefore, the submitted statement may not be withheld under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code. As you have not claimed any other exceptions to disclosure for the submitted 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, 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,



Leah B. Wingerson
Assistant Attorney General
Open Records Division

LBW/dls

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Enc. Submitted documents

c: Requestor
(w/o enclosures)