



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 11, 2009

Ms. Janet Sobey Bubert  
Brackett & Ellis  
100 Main Street  
Fort Worth, Texas 76102-3090

OR2009-12868

Dear Ms. Bubert:

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# 353755.

The Town of Westlake (the "town") received a request for "[a]ny memos, letters, correspondence or other documents pertaining to the job performance of the Westlake Academy Head of School," and for "[a]ny correspondence from a [named individual] notifying an intent to resign." You state that you do not possess any documents responsive to the second part of the request.<sup>1</sup> You claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

You argue that the submitted information is confidential under section 21.355 of the Education Code in conjunction with section 12.1051 of the Education Code<sup>2</sup> and section 552.101 of the Government Code. Section 552.101 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]

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<sup>1</sup>The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990).

<sup>2</sup>Section 12.1051(b) of the Education Code provides that "With respect to the operation of an open-enrollment charter school, any requirement in Chapter 551 or 552, Government Code, or another law that concerns open meetings or the availability of information that applies to a school district, the board of trustees of a school district, or public school students applies to an open-enrollment charter school ...."

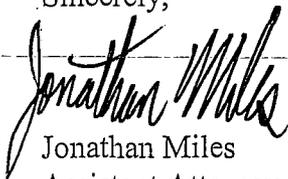
document evaluating the performance of a teacher or administrator is confidential.” Educ. Code § 21.355. This office has interpreted section 21.355 to apply to any document that evaluates, as that term is commonly understood, the performance of a teacher or an administrator. *See* Open Records Decision No. 643 (1996). In Open Records Decision No. 643, we determined for purposes of section 21.355, the word “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. *See* ORD 643 at 4.

You inform us that the information at issue pertains to an administrator of an open-enrollment charter school. However, you note that “there is not statutory requirement that a charter school’s teachers and administrators be certified.” Further, you encourage this office to amend our definition of “administrator” as adopted in ORD 643 to “delete the certification requirement for charter school employees.” On this basis, we understand that the administrator at issue was not required to, and did not, hold an administrator’s certificate under subchapter B of chapter 21 of the Education Code at the time the information at issue was created. Accordingly, on the basis of this office’s reasoning in ORD 643, which we decline to overrule in response to your arguments, we conclude that the submitted information is not related to an administrator for purposes of section 21.355 and, therefore, this information is not confidential under section 21.355 of the Education Code. As you make no other arguments against disclosure, the submitted information must be released to the requestor.

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, toll free, at (888) 672-6787.

Sincerely,



Jonathan Miles  
Assistant Attorney General  
Open Records Division

JM/cc

Ref: ID# 353755

Enc. Submitted documents

c: Requestor  
(w/o enclosures)