



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 31, 1996

Mr. James R. Raup
McGinnis, Lochridge & Kilgore, L.L.P.
1300 Capitol Center
919 Congress Avenue
Austin, Texas 78701

OR96-0849

Dear Mr. Raup:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 100096 (previously ID# 36249).

The Round Rock Independent School District (the "school district"), which you represent, received two requests for the 1995 teacher surveys of Mr. David Moore, the principal at Live Oak Elementary School. One of the requests is from Mr. Moore. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. You have submitted to this office for review a sample of the requested information.¹ We have considered the exception you claimed and have reviewed the sample documents.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. In the last legislative session, Senate Bill 1 was passed, which added section 21.355 to the Education Code. Section 21.355 provides, "Any document evaluating the performance of a teacher or administrator is confidential." This office recently interpreted this section to apply to any document that

¹In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

evaluates, as that term is commonly understood, the performance of a teacher or administrator. Open Records Decision No. 643 (1996). We enclose a copy of Open Records Decision No. 643 (1996) for your information. In that opinion, this office also concluded that a teacher is someone who is required to hold and does hold a certificate or permit required under chapter 21 of the Education Code and is teaching at the time of his or her evaluation. *Id.* Similarly, 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.* Based on the reasoning set out in Open Records Decision No. 643 (1996), we conclude that, as to the requestor who is not the subject of the evaluations, the requested information is confidential under section 21.355 of the Education Code. Therefore, pursuant to section 552.101 of the Government Code, the school district must withhold these documents.

However, we believe that the school district may release the evaluations to Mr. Moore without such disclosure being a release to "the public." In Open Records Decision No. 468 (1987), this office stated:

An employee of an agency whose job requires or permits certain access to records has not been granted access to those records as a member of the public. It is well established that information not required to be disclosed to the public under the Open Records Act may be transferred between state agencies without destroying its confidential character. Attorney General Opinion Nos. H-683 (1975); H-242 (1974). Public information remains public when transferred from the originating agency to the State Archives. Attorney General Opinion H-917 (1976). See also Open Records Decision No. 272 (1981). Similarly, an agency's employees have access to certain agency records in their role as employees, and not as members of the public.

.....

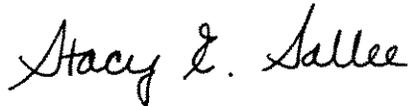
Although an employee has no special right of access to his evaluations, Open Records Decision Nos. 332 (1982), 330 (1982), the agency may permit him to examine them in his role as employee without making them available to the general public. See Open Records Decision No. 464 (1987).

Open Records Decision No. 468 (1987) at 3, 4. We therefore conclude that the school district may, but is not required to, provide Mr. Moore with access to the requested information without such a release being a release to "the public."

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous

determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Stacy E. Sallee
Assistant Attorney General
Open Records Division

SES/ch

Ref.: ID# 100096 (previously ID# 36249)

Enclosures: Open Records Decision No. 643 (1996)
Submitted documents

cc: Ms. Katherine L. Duff
Brim, Arnett & Judge, P.C.
2525 Wallingwood Drive, Building 14
Austin, Texas 78746
(w/enclosure - Open Records Decision No. 643 (1996))

Mr. David Moore
Live Oak Elementary School
8607 Anderson Mill Road
Austin, Texas 78729
(w/enclosure - Open Records Decision No. 643 (1996))

12

