Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 1, 1997

Mr. Rik B. Hawkins
Assistant Superintendent, Personnel
Texas City I.S.D.
P.O. Box 1150
Texas City, Texas 77592-1150

OR97-1003

Dear Mr. Hawkins:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 106004.

The Texas City Independent School District (the "district") received an open records request from one of the district's teachers for certain records pertaining to the requestor's application for the position of assistant principal. Specifically, the requestor seeks 1) notes taken by an interview committee regarding the requestor, 2) notes taken by the committee members after all interviews were conducted, and 3) a statement from the individual who conducted the reference checks on the requestor/applicant.[1]

You contend that the requested records are excepted from required public disclosure pursuant to section 552.111 of the Government Code. Section 552.111 of the Government Code excepts interagency and intra-agency memoranda and letters, but only to the extent that they contain advice, opinion, or recommendation intended for use in the entity's policymaking process. Open Records Decision No. 615 (1993) at 5. The purpose of this section is "to protect from public disclosure advice and opinions *on policy matters* and to encourage frank and open discussion within the agency in connection with its decision-making processes." *Austin v. City of San Antonio*, 630 S.W.2d 391, 394 (Tex. App.--San Antonio 1982, writ ref'd n.r.e.) (emphasis added). In Open Records Decision No. 615 (1993) at 5, this office held that

> to come within the [section 552.111] exception, information must be related to the *policymaking* functions of the governmental body. An agency's policymaking functions do not encompass routine internal administrative and personnel matters . . . . [Emphasis in original.]

[1]With regard to this last item, you have submitted to this office for review a sample of notes taken during the reference checks. We assume that this is the only type of responsive record held by the district.

The information at issue pertains solely to a personnel matter within the district. Consequently, none of the requested documents may be withheld pursuant to section 552.111.

You also contend that the applicant evaluations are confidential under section 21.355 of the Education Code and thus must be withheld from the public pursuant to section 552.101 of the Government Code.[2] In the last legislative session, the legislature passed Senate Bill 1, 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 evaluates, as that term is commonly understood, the performance of a teacher or administrator. Open Records Decision No. 643 (1996). 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.*

You explain that the evaluations completed by the interview team reflect "each team member's perception of the candidate as gleaned from the candidate's answers to the questions asked." Based on your explanation and the records themselves, we conclude that these documents do not "evaluate" the overall performance of the teacher/applicant, but rather merely evaluate the applicant's responses to pre-established questions during the interview process. Consequently, the district may not withhold this document under section 21.355 of the Education Code. The district therefore must release the requested documents in their entirety.

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,

Don Ballard
Assistant Attorney General
Open Records Division

JDB/RWP/ch

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[2]*Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."*

Ref.: ID# 106004

Enclosures: Submitted documents

cc: Ms. Rosie R. Perez
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(w/o enclosures)