



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

April 27, 1998

Mr. Richard Abernathy
Abernathy, Roeder, Robertson, Boyd & Joplin
101 East Davis Street
McKinney, Texas 75069-1210

OR98-1040

Dear Mr. Abernathy:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 114828.

The Plano Independent School District (the "district") received a request for "any and all evaluations and recommendations given on Alice Wilson's performances within PISD" and "Ken Bangs complete investigative report done at Harrington Elementary in Nov. 1997... include Exhibit 18." You contend that the requested evaluations are excepted from disclosure under sections 552.101 and 552.102 of the Government Code. You have provided this office for review representative samples of these materials.¹ You also claim that the requested report is excepted from disclosure by sections 552.101, 552.102, and 552.111. You did not submit a copy of the report with your request for a decision. We have, however, previously ruled on the disclosure of the investigative report and Exhibit 18. We previously ruled that except for information that personally identifies a student, you must release the report including Exhibit 18. Open Records Letter Ruling No. 98-0440 (1998). You indicate that "PISD is willing to comply with its understanding of the Attorney General's previous opinion." We believe that you must immediately release the requested report as directed in Open Records Letter Ruling 98-0440 (1998). Gov't Code § 552.007(a); Open Record

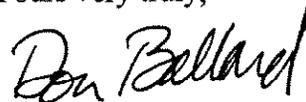
¹In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize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

Decision Nos. 490 (1988) (governmental body may not practice selective disclosure); 464 (1987); 463 (1987); 192 (1978); *see* Gov't Code § 552.353(b)(3).²

As for the requested evaluations, you claim that they must be withheld under section 552.101 of the Government Code. We agree. Section 552.101 of the Government Code exempts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 21.355 of the Education Code provides, "Any document evaluating the performance of a teacher or administrator is confidential." This office has 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 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 those documents which you have submitted are confidential under section 21.355 of the Education Code. Therefore, pursuant to section 552.101 of the Government Code, the district must withhold these documents.

Because we make a determination under section 552.101 for the requested evaluations, we do not consider your additional arguments against disclosure. 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/ch

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²It is our understanding that the district has now released the report at issue. The requestor, however, is concerned that one document contained in Exhibit 18, a third memorandum, continues to be withheld. The district contends that no such document exists. The district explains, "In the report Mr. Bangs erroneously reported that there were three memoranda because he had copied one of the memoranda twice, which was an oversight." Disputed questions of fact are not resolvable in the open records process, and therefore, this office must rely on the representations of the governmental body. Open Records Decision Nos. 554 (1990), 552 (1990). The Open Records Act, nonetheless, provides remedies for the requestor. *See* Gov't Code §552.321.

Enclosures: Submitted documents

cc: Ms. Cheryl Regan
1513 Thames Drive
Plano, Texas 75057
(w/o enclosures)