



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 16, 1998

Mr. C. Robert Heath
Bickerstaff, Heath, Smiley, Pollan, Keever & McDaniel, L.L.P.
816 Congress Avenue, Suite 1700
Austin, Texas 78701-2443

OR98-3153

Dear Mr. Heath:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 120326.

The Austin Independent School District ("AISD") received a request for copies of "memos or correspondence concerning disciplinary action taken by the district against employees involved in the 1997 and 1998 TAAS ratings changes." You submitted to this office the documents that are responsive to the request, and contend that they are protected from disclosure under section 21.355 of the Education Code in conjunction with section 552.101 of the Government Code.

Section 552.101 excepts from required public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 21.355 of the Education Code provides:

A document evaluating the performance of a teacher or administrator is confidential.

This office has interpreted this section to apply to a document that evaluates, as that term is commonly understood, the performance of a teacher or administrator. Open Records Decision No. 643 (1996). 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.*

The documents at issue are a September 8, 1998 memo to the district's systems analyst; a September 17, 1998 memo to the district's deputy superintendent; and letters sent

to four district principals dated September 9, 1998¹. You also submitted a copy of a report that was sent as an attachment to the letters, but it is our understanding that this report itself is not at issue. We will address the applicability of the exception to the documents:

The Memos - The September 17, 1998 memo to the deputy superintendent indicates it will be part of the administrator's evaluation. Although the deputy superintendent is an administrator with "four certificates including a professional superintendent certificate," the document appears to be a reprimand for a particular incident rather than an evaluation of this administrator's overall performance. Although the reprimand may likely be considered during the evaluation process, the reprimand itself does not appear to be an evaluation that is protected under section 21.355 of the Education Code. As for the September 8, 1998 memo to the systems analyst, we note that the systems analyst does not hold a certificate from the State Board for Educator Certification. The memo in question does not appear to be an evaluation and the systems analyst is not an administrator. Thus, neither of the memos is protected from disclosure under section 21.355 and must be released.

The Letters - Your brief to this office states that the letters to the principals are considered by the district to be part of their annual job evaluations. The principals are administrators who hold current certificates. The letters state that they are "written to express clearly the expectations" that the superintendent has for each principal. The letters outline expectations, but do not appear to be evaluations of the principals' job performances. The letters thus are not protected from disclosure under section 21.355 and must be released.

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,



Ruth H. Soucy
Assistant Attorney General
Open Records Division

RHS/ch

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¹You explain that the four letters are identical in content, but copies were sent to different administrators. You submitted to this office for review a copy of one of the identical letters.

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Enclosures: Submitted documents

cc: Ms. Sharon Jayson
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(w/o enclosures)