



September 12, 2000

Ms. Kelli Karczewski
Schwartz & Eichelbaum, P.C.
Attorneys At Law
800 Brazos Street, Suite 870
Austin, Texas 78701

OR2000-3506

Dear Ms. Karczewski:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 139132.

The Bastrop Independent School District (the "district"), which you represent, received a request for the employment contracts for a named district employee for the two years the district employed the individual, any letters of reprimand and any professional improvement plans in the named employee's personnel file. We note that your letter requesting a decision from this office only addresses the requests for the letters of reprimand and the professional improvement plans in the named individual's personnel file. As you do not claim an exception or present arguments for excepting from public disclosure the requested contracts, we assume you have already released this information to the requestor. *See Gov't Code* § 552.301; .302. You claim that the requested letters of reprimand and the professional improvement plans are excepted from disclosure under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information made confidential by other statutes. Section 21.355 of the Education Code provides that "[a]ny 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). After reviewing the submitted documents and your arguments, we conclude that these documents are not evaluations for the purpose of section 21.355 of the Education Code. Accordingly, the district may not withhold the documents under section 552.101 in conjunction with section 21.355 of the

Education Code. Thus, the district must release the submitted documents to the requestor.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

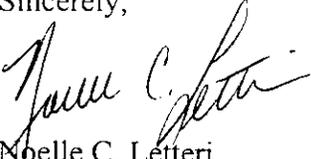
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for

contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Noelle C. Letteri". The signature is fluid and cursive, with a long horizontal stroke at the end.

Noelle C. Letteri
Assistant Attorney General
Open Records Division

NCL/pr

Ref: ID# 139132

Encl. Submitted documents

cc: Ms. Cheryl Robinson
230 Johnson Road
Bastrop, Texas 78602
(w/o enclosures)