



January 30, 2001

Mr. Bryan P. Neal
Thompson & Knight
1700 Pacific Avenue, Suite 3300
Dallas, Texas 75201-4693

OR2001-0359

Dear Mr. Neal:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 143717.

The Allen Independent School District (the "district"), which you represent, received a request for reference forms relating to a person who applied for employment with the department. You claim that the requested information is excepted from disclosure under section 552.111 of the Government Code and section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code. We have considered the exceptions you claim and reviewed the submitted information.

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. Section 21.355 of the Education Code provides that "[a] document evaluating the performance of a teacher or administrator is confidential." To be employed by a school district as a teacher or administrator, one must hold "an appropriate certificate or permit." *See* Educ. Code § 21.003(a). You have not indicated, nor are we able to determine from the submitted documents, whether the applicant in question held an appropriate teacher's certificate or permit at the time he applied for the position with the district. If not, then the reference forms are not confidential under section 21.355. However, if the applicant did hold an appropriate teacher's certificate or permit, the next question we must address is whether the submitted records are documents "evaluating the performance of a teacher" under section 21.355.

This office has interpreted section 21.355 to apply to any document that evaluates, as that term is commonly understood, the performance of a teacher or administrator. *See* Open Records Decision No. 643 at 3 (1996). Although the documents in question are not traditional performance evaluations, we find that some of the documents do “evaluate” the applicant’s prior employment performance and must be withheld. The remaining documents do not evaluate the applicant’s previous employment and are therefore not protected from disclosure under section 552.101 in conjunction with section 21.355 of the Education Code. We have marked the documents accordingly.

You also assert that the submitted information is excepted from disclosure under section 552.111. Section 552.111 excepts from disclosure “an interagency or intra-agency memorandum or letter that would not be available by law to a party in litigation with the agency.” In Open Records Decision No. 615 (1993), this office reexamined the predecessor to the section 552.111 exception in light of the decision in *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.--Austin 1992, no writ), and held that section 552.111 excepts only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body. An agency’s policymaking functions do not encompass internal administrative or personnel matters; disclosure of information relating to such matters will not inhibit free discussion among agency personnel as to policy issues. ORD 615 at 5-6. Because the requested records relate to a personnel matter, i.e., whether or not to hire a particular person as a teacher, we conclude that none of the information is protected from disclosure by section 552.111 of the Government Code. *See* Open Records Decision No. 626 at 4 (1994).

In summary, if the applicant was not a “teacher” at the time he applied for employment, all the documents must be released. If the applicant did hold the appropriate teacher’s certificate or permit, the district must withhold the marked evaluations under chapter 552.101 of the Government Code in conjunction with section 21.355 of the Education Code if the applicant was a “teacher” at the time he applied for employment with the district. The remaining information, however, must be released.

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).

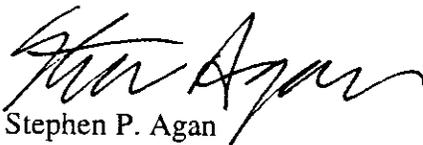
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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 Hadassah Schloss at 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,



Stephen P. Agan
Assistant Attorney General
Open Records Division

SPA/seg

Ref: ID# 143717

Encl. Submitted documents

cc: Mr. Ronald Green
2414 Pecan Valley
Cleburne, Texas 76013
(w/o enclosures)