



April 3, 2001

Ms. Carolyn Hanahan
Feldman & Rogers, L.L.P.
5718 Westheimer, Suite 1200
Houston, Texas 77057

OR2001-1322

Dear Ms. Hanahan:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 145587.

The Fort Bend Independent School District (the "district"), which you represent, received a request for copies of forms used to screen applicants for an assistant principal's position. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.102 of the Government 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." 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). After reviewing the documents in question, we find that they do evaluate the applicants' qualifications for the position of assistant principal, but they do not evaluate the applicants' employment performance, which is the type of information that the statute was enacted to protect. Therefore, we conclude that the submitted documents are not confidential under section 21.355 of the Education Code and may not be withheld under section 552.101 of the Government Code.

You next claim that portions of the submitted documents are protected from disclosure under section 552.102(b) of the Government Code. Section 552.102(b) provides:

Information is excepted from the requirements of Section 552.021 if it is a transcript from an institution of higher education maintained in the personnel file of a professional public school employee, except that this section does not exempt from disclosure the degree obtained or the curriculum on a transcript in the personnel file of the employee.

The documents in question are screening forms that evaluate the qualifications of applicants for an assistant principal position; they are not transcripts. Although one of the criteria in the screening forms is based on a review of the applicants' transcripts, we do not believe that this information is protected from disclosure under section 552.102(b) of the Government Code. *Cf.* Open Records Decision Nos. 473 (1987) (even highly subjective evaluations of public employees may not ordinarily be withheld under statutory predecessor to section 552.102), 316 (1982) (same); Open Records Decision No. 444 (1986) (public has legitimate interest in knowing the reasons for the dismissal, demotion, promotion, or resignation of public employee). Therefore, because you have not demonstrated that any of the Act's exceptions apply, 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 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# 145587

Encl. Submitted documents

cc: Mr. Kevin Winter
4718 Melissa Court
Sugarland, Texas 77479
(w/o enclosures)