The ruling you have requested has been amended as a result of litigation and has been attached to this document.

ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 21, 2004

Ms. Jo Ann Collier
Feldman & Rogers, L.L.P.
317 Soledad Street
San Antonio, Texas 78205-1508

OR2004-3243

Dear Ms. Collier:

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# 199899.

The North East Independent School District (the "district"), which you represent, received a request for all information relating to a named individual. You state that you have released some of the requested information to the requestor. However, you claim that the remainder of 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.

Initially, we note that the instant request contains questions of a factual nature. Section 552.002 of the Government Code defines public information as "information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business: (1) by a governmental body; or (2) for a governmental body and the governmental body owns the information or has a right of access to it." The Act does not require a governmental body to obtain information not in its possession or to prepare new information in response to a requestor. Open Records Decision No. 445 (1986). Nor does the Act require a governmental body to answer factual questions or to, in effect, respond to legal interrogatories. Open Records Decision No. 347 (1982). Therefore, the district need not respond any questions contained in the request.

You claim that the submitted evaluations are excepted from disclosure pursuant to section 552.101 of the Government Code , which excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *See* Gov't Code § 552.101. Section 552.101 encompasses information that is protected from disclosure

by other statutes, such as section 21.355 of the Education Code. Section 21.355 provides that "[a] document evaluating the performance of a teacher or administrator is confidential." Educ. Code § 21.355. 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. *See* Open Records Decision No. 643 (1996). In Open Records Decision No. 643, this office also concluded that a teacher is someone who is required to hold and does hold a certificate or permit required under chapter 21 of the Education Code and is teaching at the time of his or her evaluation. *See id.* Similarly, 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. *See id.*

Assuming that the individual who is the subject of the submitted information held a certificate or permit required under chapter 21 and was teaching at the time of his evaluation, we find that some of the submitted information constitutes evaluations of this teacher as that term is commonly understood and is therefore confidential under section 21.355 of the Education Code. Although we agree that some of the submitted information constitutes evaluations of the performance of a teacher, we do not believe the documents we have marked for release are evaluations for the purpose of section 21.355 and therefore we find that the documents we have marked may not be withheld under that section

Section 552.102 of the Government Code protects from disclosure most information on a transcript from an institution of higher education maintained in the personnel files of professional public school employees. Gov't Code § 552.102(b). Section 552.102(b) excepts from disclosure all information from transcripts other than the employee's name, the courses taken, and the degree obtained. Open Records Decision No. 526 (1989). Accordingly, with the exception of the employee's name, courses taken, and degrees obtained, we determine that the district must withhold the submitted transcripts under section 552.102(b) of the Government Code.

In summary, you must withhold the teacher evaluations, with the exception of those documents we have marked for release, under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code. With the exception of the employee's name, courses taken, and degrees obtained, you must withhold the submitted transcripts under section 552.102(b) of the Government Code.

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).

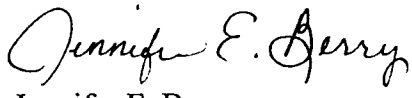
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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 Dep't of Pub. 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 Texas Building and Procurement 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,



Jennifer E. Berry
Assistant Attorney General
Open Records Division

JEB/sdk

Ref: ID# 199899

Enc: Submitted documents

c: Ms Claire L. Rodriguez
6310 Stones Mill
San Antonio, Texas 78233
(w/o enclosures)

CAUSE NO. GV401025

NORTH EAST INDEPENDENT SCHOOL DISTRICT AND DR. RICHARD A. MIDDLETON, IN HIS OFFICIAL CAPACITY AS CUSTODIAN OF PUBLIC RECORDS FOR NORTH EAST INDEPENDENT SCHOOL DISTRICT,	§	IN THE DISTRICT COURT OF
Plaintiffs,	§	TRAVIS COUNTY, TEXAS
V.	§	
GREG ABBOTT, ATTORNEY GENERAL OF TEXAS,	§	201ST JUDICIAL DISTRICT
Defendant.		

Filed in The District Court of Travis County, Texas
MAR 19 2007
At 3 M.
Amalia Rodriguez-Mendoza, Clerk

AGREED FINAL JUDGMENT

On this date, the Court heard the parties' motion for an agreed final judgment. Plaintiffs North East Independent School District and Dr. Richard A. Middleton, in His Official Capacity as Custodian of Public Records for North East Independent School District (collectively "NEAST ISD"), and Defendant Greg Abbott, Attorney General of Texas, appeared, by and through their respective attorneys, and announced to the Court that all matters of fact and things in controversy between them had been fully and finally compromised and settled. This cause is an action under the Public Information Act (PIA), Tex. Gov't Code ch. 552. The parties represent to the Court that, in compliance with Tex. Gov't Code § 552.325(c), the requestor, Ms. Claire L. Rodriguez, was sent reasonable notice of this setting and of the parties' agreement that NEAST ISD must withhold some of the information at issue; that the requestor was also informed of her right to intervene in the suit to contest the withholding of this information; and that the requestor has not informed the parties of her intention to intervene. Neither has the requestor filed a motion to

intervene or appeared today. After considering the agreement of the parties and the law, the Court is of the opinion that entry of an agreed final judgment is appropriate, disposing of all claims between these parties.

IT IS THEREFORE ADJUDGED, ORDERED AND DECLARED that:

1. The following documents concerning Roger Echon are confidential under Tex. Educ. Code Ann. § 21.355, and, therefore, excepted from disclosure by Tex. Gov't Code Ann. § 552.101:

a) June 14, 2000, Letter of Recommendation (1 page)

b) May 31, 2000, Letter of Recommendation (1 page)

c) April 2, 2001 Memorandum (1 page)

d) November 12, 2001, Memorandum (1 page)

e) October 16, 2002, Memorandum (1 page)

f) December 2, 2003, Memorandum (1 page).

2. NEAST ISD no longer contests the disclosure of the following correspondence: an August 21, 2001, memorandum, from Randy Hover to Roger Echon. If it has not already done so, NEAST ISD shall disclose this correspondence to the requestor promptly upon receipt of this agreed final judgment signed by the Court.

3. All costs of court are taxed against the parties incurring the same;

4. All relief not expressly granted is denied.

5. This Agreed Final Judgment finally disposes of all claims between Plaintiffs and Defendant and is a final judgment; and

6. To the extent that this judgment conflicts with Letter Ruling OR2004-3243, this judgment prevails.

SIGNED this the 19 day of March, 2007.

PRESIDING JUDGE

APPROVED:

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