

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 28, 2006

Mr. William M. Buechler
Buechler & Associates
3660 Stoneridge Road, Suite D-101
Austin, Texas 78746

OR2006-04310

Dear Mr. Buechler:

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# 247951.

The Crowley Independent School District (the "district"), which you represent, received a request for disciplinary actions or reprimands against district employees at North Crowley Ninth Grade or North Crowley High School in the last three years, any determination of termination or non-renewal of a teacher by the district's Board in the last five years, and any disciplinary action taken against a named student. You state that you have no information responsive to the portion of the request regarding the termination or non-renewal of a teacher.¹ Further, you inform us that the information regarding the named student will be withheld in accordance with the federal Family Education Rights and Privacy Act ("FERPA"). See Open Records Decision No. 634 (1995) (educational agency or institution may withhold from public disclosure information that is protected by FERPA and excepted from required public disclosure by sections 552.026 and 552.101 without the necessity of requesting an attorney general decision as to those exceptions). You claim that the remaining information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

¹We note that the Act does not require a governmental body to disclose information that did not exist at the time the request was received. *Econ. Opportunities Dev. Corp. v. Butamante*, 562 S.W.2d 266 (Tex.Civ.App.—San Antonio 1978, writ dis'd); Open Records Decision No. 452 at 3 (1986).

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information protected by other statutes. Section 21.355 of the Education Code provides, "A document evaluating the performance of a teacher or administrator is confidential." This office 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). In that opinion, this office 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. *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. *Id.* We understand you to indicate the named employees were teachers for purposes of section 21.355 at the time the submitted documents were created. *See id.*

The documents you seek to withhold under this provision are written reprimands of district teachers as well as a professional growth plan for one teacher. Upon review, we find that these documents are not the type of records made confidential by section 21.355 of the Education Code. You further argue that the Commissioner of Education has ruled that written reprimands are evaluations for the purposes of section 21.355. *Tave v. Dallas Indep. Sch. Dist.*, Dkt. No. 067-R2-501 (Comm's Educ. 2001). However, we disagree with the Commissioner's ruling in *Tave*. Thus, we find that the submitted documents are not confidential under section 21.355 and are not excepted from disclosure under section 552.101. Accordingly, the submitted information must be released 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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the

Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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 Office of the Attorney General 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,



Matthew T. McLain
Assistant Attorney General
Open Records Division

MM/krl

Ref: ID# 247951

Enc. Submitted documents

c: Mr. David Luningham
Watson, Caraway, Harrington, Nelson, Midkiff & Luningham, L.L.P.
1000 Commerce Building
207 West 7th Street
Fort Worth, Texas 76102
(w/o enclosures)

MAY 23 2007

At 8:45 A. M.
Amalia Rodriguez-Mendoza, Clerk

CAUSE NO. D-1-GV-06-000924

CROWLEY INDEPENDENT SCHOOL DISTRICT and GREG GIBSON, In His Official Capacity As Custodian of Public Records for CROWLEY INDEPENDENT SCHOOL DISTRICT, Plaintiffs,	§ IN THE DISTRICT COURT OF § § § § § TRAVIS COUNTY, TEXAS § § § §
V.	§ § §
GREG ABBOTT, ATTORNEY GENERAL OF TEXAS, Defendant.	§ § § 201 st JUDICIAL DISTRICT

AGREED FINAL JUDGMENT

On this date, the Court heard the parties' motion for an agreed final judgment. Plaintiffs Crowley Independent School District and Greg Gibson, in his official capacity as Custodian of Public Records for Crowley Independent School District (collectively "Crowley 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, Mr. David Lunningham, was sent reasonable notice of this setting and of the parties' agreement that Crowley ISD must withhold some of the information at issue; that the requestor was also informed of his right to intervene in the suit to contest the withholding of this information; and that the requestor has not informed the parties of his 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. Information regarding disciplinary actions or reprimands against district employees at North Crowley 9th Grade or North Crowley High School in the last three years, and any determination of termination or non-renewal of a teacher by Crowley ISD's Board in the last five years, specifically, the following documents:

- a) September 22, 2005, Memorandum (2 pages)
- b) October 28, 2005, Memorandum (1 page)
- c) February 17, 2006, Memorandum (1 page)
- d) August 22, 2005, Memorandum (1 page)
- e) January 31, 2006, Memorandum (1 page)
- f) September 8, 2005, Memorandum (2 pages)
- g) November 4, 2005, Memorandum (1 page)
- h) August 22, 2005, Memorandum (1 page)
- i) February 6, 2006, Memorandum (2 pages)
- j) April 4, 2005, Memorandum (1 page)
Re: March 24, 2005 Conference
- k) April 4, 2005, Memorandum (1 page)
Re: March 31, 2005 Conference
- l) Professional Growth Plan: School Year 2004-2005

is confidential under Tex. Educ. Code Ann. § 21.355, and, therefore, is excepted from disclosure by Tex. Gov't Code Ann. § 552.101.

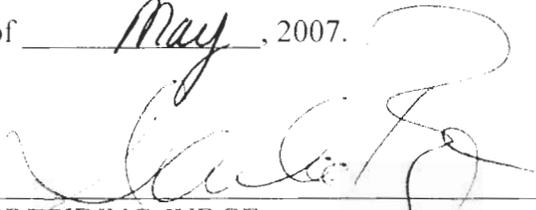
2. The remaining information, specifically, correspondence dated January 30, 2006, from Mr. Greg Gibson to Ms. Nikke Condra, is not excepted from disclosure and Crowley ISD shall release it to the requestor upon receipt of this judgment signed by the court.

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

4. All relief not expressly granted is denied; and

5. This Agreed Final Judgment finally disposes of all claims between Plaintiff's and Defendant and is a final judgment.

SIGNED this the 23 day of May, 2007.



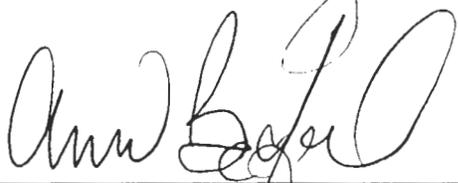
PRESIDING JUDGE

APPROVED:



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