



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 20, 2006

Mr. Randel B. Gibbs
Frisco Independent School District
Law Offices of Robert E. Luna, P.C.
4411 North Central Expressway
Dallas, Texas 75205

OR2006-14963

Dear Mr. Gibbs:

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# 268001.

The Frisco Independent School District (the "district"), which you represent, received a request for "all substitute teacher evaluations in which [a named person] has authored, participated in and/or subscribed information to, at Liberty High School or any other [district] school(s) at which [the named person] has been employed." You claim that the submitted 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. We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that any person may submit comments stating why information should or should not be released).

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses information protected 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. Open Records Decision No. 643 (1996). This office has determined 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 the evaluation. Open Records Decision No. 643.

You state that the submitted information is confidential under section 21.355. You do not indicate, however, and it is not otherwise clear from the information itself, whether each substitute teacher at issue held a teacher's certificate or permit and was performing the functions of a teacher at the time of the evaluations. Therefore, to the extent that the substitute teacher at issue in each evaluation held a teacher's certificate or permit and was performing the functions of a teacher at the time of the evaluations, the evaluations are confidential under section 21.355 of the Education Code and must be withheld under section 552.101 of the Government Code. *See* Open Records Decision No. 643 at 4. To the extent that the evaluations do not satisfy these criteria, they are not confidential under section 21.355 and 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).

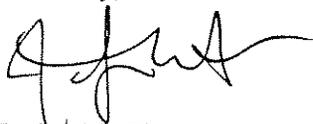
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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,

A handwritten signature in black ink, appearing to read 'J. Thompson', written over a horizontal line.

Jaclyn N. Thompson
Assistant Attorney General
Open Records Division

JNT/dh

Ref: ID# 268001

Enc. Submitted documents

c: Mr. J. Umoren
P.O. Box 270114
Dallas, Texas 75227
(w/o enclosures)