



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 14, 2007

Ms. Ellen H. Spalding
McGinnis, Lockridge & Kilgore, LLP
For the Sherman Independent School District
3200 One Houston Center
1221 McKinney Street
Houston, Texas 77010

OR2007-02848

Dear Ms. Spalding:

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# 273360.

The Sherman Independent School District (the "district"), which you represent, received a request for the personnel file of a named individual, "including reprimands and accolades." You state, and provide documentation showing, that the requestor has agreed to the redaction of some of the responsive information. You also state that you will redact social security numbers pursuant to section 552.147 of the Government Code.¹ You further state that some of the responsive information will be released to the requestor. 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.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 21.355 of the Education Code provides that "a document evaluating the performance of a teacher or administrator is confidential." Educ. Code § 21.355. The Third

¹We note that section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act.

Court of Appeals has held that a memorandum from a principal to a teacher was an evaluation for purposes of section 21.355, because it reflected the principal's judgment regarding the teacher's actions, gave corrective direction, and provided for further review. *Abbott v. North East Indep. Sch. Dist.*, No. 03-04-00744-CV (Tex. App.—Austin May 12, 2006, n.p.h.). This office has determined that a teacher is a person 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. We also determined that the word “administrator” in section 21.355 means a person who is required to and does in fact hold an administrator's certificate under subchapter B of chapter 21 of the Education Code and is performing the functions of an administrator, as that term is commonly defined, at the time of the evaluation. *Id.*

You argue that the submitted information consists of evaluations of an individual who held the requisite certificates and was employed initially as a teacher and then subsequently as an administrator at the time of the evaluations. Upon review, we agree that most of the information submitted as Exhibit C falls within the scope of section 21.355 and must be withheld under section 552.101 of the Government Code. We find, however, that the remaining information in Exhibit C, which we have marked for release, does not evaluate the performance of a teacher or administrator as provided by section 21.355 of the Education Code. Therefore, no portion of the remaining information may be withheld under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code. As you raise no further exceptions to disclosure, the remaining 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,



Holly R. Davis
Assistant Attorney General
Open Records Division

HRD/krl

Ref: ID# 273360

Enc. Submitted documents

c: Ms. Melissa Vargas
c/o Ms. Ellen H. Spalding
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(w/o enclosures)