



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 4, 2008

Mr. S. Anthony Safi  
Mounce, Green, Myers, Safi, Paxson & Galatzan, P.C.  
P.O. Box 1977  
El Paso, Texas 79950-1977

OR2008-00147

Dear Mr. Safi:

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# 299095.

The El Paso Independent School District (the "district"), which you represent, received a request for numerous documents relating to a specific coach. You state the district is providing the requestor with some of the documents. You claim that the remaining 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 representative sample of information.<sup>1</sup>

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. This exception encompasses information made confidential by other laws. You raise section 552.101 in conjunction with section 21.355 of the Education Code for a portion of the information. This section provides that "[a] document evaluating the performance of a teacher or administrator is confidential." Educ. Code § 21.355. It applies 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, we determined that for purposes of section 21.355, the word "teacher" means a person who is required to and does in fact hold a teaching certificate under subchapter B of chapter 21 of the Education Code or a school district teaching permit under section 21.055 and who is engaged in the process of teaching, as that term is commonly defined, at the time of the evaluation. *See id.* at 4; *Abbott v. North East Independent School*

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<sup>1</sup>We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

*District*, 212 S.W.3d 364, 367 (Tex.App.-Austin 2006, no pet.) (holding that a document evaluates a teacher when it “reflects the principal’s judgment regarding [the teacher’s] actions, gives corrective direction, and provides for further review.”). You state that the individual at issue holds the appropriate teaching certificate and was teaching at the time of the evaluations. Based on your representations and our review of the information at issue, we conclude that the information at issue constitutes teacher evaluations for the purposes of section 21.355. Therefore, the district must withhold the evaluations under section 552.101 of the Government Code.

Section 552.101 of the Government Code also encompasses common-law privacy, which protects information if it (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). In addition to the categories of information considered confidential under common-law privacy in *Industrial Foundation*, this office has found that personal financial information not relating to a financial transaction between an individual and a governmental body is excepted from required public disclosure under common-law privacy. *See* Open Records Decision No. 600 (1992) (public employee’s withholding allowance certificate, designation of beneficiary of employee’s retirement benefits, direct deposit authorization, and employee’s decisions regarding voluntary benefits programs, among others, are protected under common-law privacy). We agree that the information that you highlighted in yellow in the remaining documents constitutes personal financial information that is confidential under common-law privacy. Accordingly, the marked information in the remaining documents must be withheld under section 552.101 of the Government Code.

In summary, the teacher evaluations are confidential under section 21.355 of the Education Code and the district must withhold them under section 552.101 of the Government Code. The personal financial information the district has marked is confidential under common-law privacy and must be withheld under section 552.101 of the Government Code. The remaining information 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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, 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 challenge 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,



Chris Schulz  
Assistant Attorney General  
Open Records Division

CS/jb

Ref: ID# 299095

Enc. Submitted documents

c: Ms. Ashley Esparza  
3696 La Cuesta Drive  
El Paso, Texas 79936  
(w/o enclosures)