



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 7, 2008

Mr. Stephen E. Dubner
Law Office of Stephen E. Dubner
2002 South Stemmons Freeway, Suite 200
Lake Dallas, Texas 75065

OR2008-04616

Dear Mr. Dubner:

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# 307596.

The Argyle Independent School District (the "district"), which you represent, received a request for 1) the written reprimand given to the superintendent by board members in the January 31 special meeting, and 2) a written evaluation of the superintendent's first six months given by the board members. You claim that the submitted 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.

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). In Open Records Decision No. 643, we determined that an administrator is someone who is required to hold and does hold a certificate or permit required under chapter 21 of the Education Code and is serving as an administrator at the time of the evaluation. *See id.* at 4.

You contend that Exhibits 2 and 3 are confidential under section 21.355 as evaluative documents of a district administrator. You assert that the submitted evaluation and written reprimand were created to evaluate the performance of a district administrator, who held the appropriate certificate and was serving as an administrator at the time of the evaluation and written reprimand. Upon review of your arguments and the documents at issue, we agree that Exhibits 2 and 3 constitute evaluations of a district administrator. Thus Exhibits 2 and 3 are confidential under section 21.355 of the Education Code and must be withheld under section 552.101 of the Government Code.¹ See *Abbott v. North East Indep. Sch. Dist.*, No. 03-04-00744-CV, 2006 WL 1293545 (Tex. App.—Austin May 12, 2006, no pet.) (concluding that written reprimand constitutes evaluation for purposes of Educ. Code § 21.355).

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

¹As our ruling is dispositive, we need not address your remaining argument against disclosure.

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 cursive script that reads "Laura E. Ream".

Laura E. Ream
Assistant Attorney General
Open Records Division

LER/jb

Ref: ID# 307596

Enc. Submitted documents

c: Ms. Amy Dodd Thompson
Denton Record-Chronicle
314 East Hickory Street
Denton, Texas 76202
(w/o enclosures)