



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

April 14, 2008

Ms. Laura C. Rodgriguez
Walsh, Anderson, Brown, Schulze, & Aldridge, P.C.
P.O. Box 160606
San Antonio, Texas 78246

OR2008-04903

Dear Ms. Rodriguez:

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# 307198.

The Comal Independent School District (the "district"), which you represent, received a request for all correspondence sent or received by nine named board members and administrators during a specified time period. You state that you have already released some of the information 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 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 that other statutes make confidential. You assert that the submitted information contains documents that are excepted from disclosure under section 552.101 in conjunction with section 21.355 of the Education Code, which provides that "[a] document evaluating the performance of a teacher or administrator is confidential." Educ. Code § 21.355. This office has interpreted section 21.355 to apply to any document that evaluates, as that term is commonly understood, the performance of a teacher or an administrator. *See* Open Records Decision No. 643 (1996). We have 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 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.*

The submitted information consists of three e-mails, all of which have attached a completed form entitled "Comal ISD Superintendent Performance Assessment for 2007." You have provided the administrator's certificate and a copy of the district's web page, which show that the superintendent was a certified and active school administrator at the time the evaluations were made. Having considered your arguments and reviewed the information at issue, we agree that the assessment forms, which we have marked, evaluate the performance of an administrator for the purposes of section 21.355. However, you have failed to show how the submitted e-mail correspondence evaluates the performance of an administrator for the purposes of section 21.355. Accordingly, the email correspondence may not be withheld on that basis.

We note that some of the submitted information includes personal e-mail addresses that are excepted from disclosure under section 552.137 of the Government Code.¹ Section 552.137 excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body" unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See* Gov't Code § 552.137(a)-(c). The e-mail addresses at issue are not a type specifically excluded by section 552.137(c). Accordingly, the district must withhold the e-mail addresses we have marked under section 552.137 of the Government Code, unless the owners have affirmatively consented to their disclosure.

In summary, the district must withhold the submitted assessment forms under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code. Unless the district receives consent for their release, the district must withhold the e-mail addresses we have marked in accordance with section 552.137 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

¹The Office of the Attorney General will raise a mandatory exception like section 552.137 on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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,



Bill Longley
Assistant Attorney General
Open Records Division

BL/eeg

Ref: ID# 307198

Enc. Submitted documents

c: Ms. Rose Cervin
100 Sun Valley Drive
Spring Branch, Texas 78070
(w/o enclosures)