



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 28, 2008

Mr. Douglas L. Hibbard
Bracewell & Giuliani, L.L.P.
711 Louisiana Street, Suite 2300
Houston, Texas 77002-2770

OR2008-10184

Dear Mr. Hibbard:

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# 317097.

The Pasadena Independent School District (the "district"), which you represent, received a request for a report regarding an incident pertaining to the TAKS testing conducted at a specified school. You claim that the requested 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 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 addition, the Austin Court of Appeals concluded that a principal's written memorandum to a teacher constituted an evaluation for purposes of section 21.355 where "it reflects the principal's judgment regarding [a teacher's] actions, gives corrective direction, and provides for further review." *North East Indep. Sch. Dist. v. Abbott*, 212 S.W.3d 364 (Tex. App.—Austin 2006, no pet.). This office has 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. Open Records Decision No. 643.

The submitted information is a letter from the Texas Education Agency to the district regarding a reported testing irregularity. You contend that the submitted information is confidential under section 21.355 of the Education Code. You assert that the submitted information evaluates the performance of an administrator who held the appropriate certificate and was serving as an administrator at the time of the evaluation. Upon review of your arguments and the information at issue, we find that the submitted information does not evaluate the performance of an administrator for purposes of section 21.355 of the Education Code; therefore, the district may not withhold the information under section 552.101 of the Government Code on that ground. *See* Educ. Code §§ 21.354(c) (“school district shall appraise each administrator annually”), 21.355. The submitted 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 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). If the governmental body does not file suit over 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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/mcf

Ref: ID# 317097

Enc. Submitted documents

c: Ms. Dardon Ann Hayter
3619 Cadena Drive
Pasadena, Texas 77504
(w/o enclosures)