



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 20, 2008

Ms. Kelli Karczewski
Feldman & Rogers, L.L.P.
222 North Mound, Suite 2
Nacogdoches, Texas 75961

OR2008-11425

Dear Ms. Karczewski:

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# 319846.

The Cushing Independent School District (the "district"), which you represent, received five requests from the same requestor for the contract, 2007-2008 school year evaluation, terms and conditions of administrative leave, and resignation letter of the former superintendent and the contract of the interim superintendent. You state that you have released the resignation letter and both contracts to the requestor. You claim that the remaining 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 disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information protected by other statutes. Section 21.355 of the Education Code provides that "[a] document evaluating the performance of a teacher or administrator is confidential." 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 administrator. *See* Open Records Decision No. 643 (1996). In Open Records Decision No. 643, this office also concluded that an administrator is someone who is required to hold and does hold a certificate required under chapter 21 of the Education Code and is administering at the time of his or her evaluation. *Id* at 4. You state that the individual at issue held an administrator certificate under

subchapter B of chapter 21 of the Education Code and was performing the functions of an administrator at the time of the evaluations. You contend that the submitted evaluation for the 2007-2008 school year and the memorandum of the terms and conditions of administrative leave constitute evaluations for the purpose of section 21.355 of the Education Code. Upon review, we find that the submitted memorandum of the terms and conditions of administrative leave does not evaluate the administrator. Accordingly, the district may not withhold this document under section 552.101. We agree, however, that the submitted evaluation for the 2007-2008 school year is an evaluation of the administrator at issue. Accordingly, we find that the submitted evaluation for the 2007-2008 school year is subject to section 21.355 of the Education Code. Thus, the district must withhold the evaluation for the 2007-2008 school year under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code. As you raise no further exceptions for the memorandum, it 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). 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,



Laura E. Ream
Assistant Attorney General
Open Records Division

LER/jb

Ref: ID# 319846

Enc. Submitted documents

c: Ms. Tyesha Boudreaux
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