



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 17, 2008

Mr. Fred A. Stormer
Underwood Attorneys and Counselors at Law
P.O. Box 9158
Amarillo, Texas 79105-9158

OR2008-12808

Dear Mr. Stormer:

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#322133.

The Big Spring Independent School District (the "district"), which you represent, received a request for a resignation letter, personnel file, and any correspondence by the Texas Education Agency to the Board of Trustees regarding a named superintendent.¹ You state that you have released some of the requested information. You also inform us that you have redacted student identifying information pursuant to the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232g.² You claim that the remaining information is

¹The requestor has specifically excluded social security numbers, driver's license numbers, home addresses, and family member information from her request. Additionally, you state the requestor has clarified that she does not seek certain certifications of completion or other certification documents. Accordingly, any such information is not responsive to the present request and need not be released. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.--San Antonio 1978, writ dismissed).

²The United States Department of Education Family Policy Compliance Office (the "DOE") has informed this office that FERPA does not permit state and local educational authorities to disclose to this office, without parental consent, unredacted, personally identifiable information contained in education records for the purpose of our review in the open records ruling process under the Act. The DOE has determined that FERPA determinations must be made by the educational authority in possession of the education records. We have posted a copy of the letter from the DOE to this office on the Attorney General's website: <http://www.oag.state.tx.us/open/20060725usdoe.pdf>.

excepted from disclosure under section 552.101 of the Government Code.³ 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. Section 552.101 encompasses section 21.355 of the Education Code, which provides, "[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 for purposes of section 21.355, the word "administrator" means a person who is required to and does in fact hold an administrator's certificate under subchapter B of chapter 21 of the Education Code and is performing the functions of an administrator at the time of the evaluation. *Id.* You argue that the submitted documents constitute evaluative instruments regarding the superintendent at issue. You state that the superintendent who is the subject of these evaluations is a certified administrator and holds a position that requires certification pursuant to subchapter B of chapter 21 of the Education Code. Furthermore, we understand him to have been performing the functions of an administrator at the time of the evaluations. Thus, we determine that the submitted documents qualify as evaluations under section 21.355. *See* ORD 643 at 3 (stating that "'evaluate' is defined as 'to determine or fix the value of,' 'to determine the significance, worth, or condition of . . .'"). Accordingly, the submitted information must be withheld under section 552.101 in conjunction with section 21.355 of the Education Code.

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).

³You raise section 552.102 of the Government Code in conjunction with section 21.355 of the Education Code. However, section 552.101 is the proper exception to raise with section 21.355. Furthermore, as you have provided no supporting arguments under section 552.102 explaining how this exception is applicable to the submitted information, we have no basis for finding the information confidential under that exception. *See* Gov't Code § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested).

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,



Christina Alvarado
Assistant Attorney General
Open Records Division

CA/jb

Ref: ID#322133

Enc. Submitted documents

c: Ms. Celinda Emison
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(w/o enclosures)