



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

March 12, 2009

Mr. Joe B. Hairston  
Walsh, Anderson, Brown, Aldridge, & Gallegos P.C.  
P.O. Box 2156  
Austin, Texas 78768

OR2009-03315

Dear Mr. Hairston:

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# 341143.

The New Caney Independent School District (the "district"), which you represent, received a request for information pertaining to certain district policies, a named individual's evaluation and contract, minutes from a specified executive session, and the 2008-2009 budget report. You state that you have released some of the requested information. You claim that the remaining 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.<sup>1</sup>

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 exception encompasses information that other statutes make confidential. You raise section 552.101 in conjunction with section 551.104 of the

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<sup>1</sup>We note that the district is not required to submit a certified agenda or tape recording of a closed meeting to this office for review. *See* Open Records Decision No. 495 at 4 (attorney general lacks authority to review certified agendas or tapes of executive sessions to determine whether a governmental body may withhold such information from disclosure under statutory predecessor to section 552.101 of the Government Code).

Government Code, which provides that “[t]he certified agenda or tape of a closed meeting is available for public inspection and copying only under a court order issued under Subsection (b)(3).” *Id.* § 551.104(c).

Thus, such information cannot be released to a member of the public in response to an open records request. *See* Open Records Decision No. 495 at 4 (1988). Accordingly, the district must withhold any responsive certified agenda of a closed meeting of the district school board under section 552.101 of the Government Code in conjunction with section 551.104(c) of the Government Code.

Section 552.101 also 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). This office has 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 subchapter B of 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.*

You assert that the submitted information consists of an evaluation of the district’s superintendent by the district’s board. You state that the superintendent who is the subject of the evaluation held an administrator’s certificate under subchapter B of chapter 21 of the Education Code and was performing the functions of an administrator at the time of the evaluation. Thus, we determine that the submitted documents qualify as an evaluation under section 21.355. Accordingly, the submitted information must be withheld under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code.

In summary, the district must withhold any responsive certified agenda of a closed meeting of the district school board under section 552.101 of the Government Code in conjunction with section 551.104(c) of the Government Code. The district must also withhold the submitted information under section 552.101 in conjunction with section 21.355 of the Education Code.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General’s Open Government Hotline, toll free,

at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,

A handwritten signature in cursive script that reads "Paige Savoie".

Paige Savoie  
Assistant Attorney General  
Open Records Division

PS/eeg

Ref: ID# 341143

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)