



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 24, 2009

Ms. Ann Manning
Underwood Law Firm
P.O. Box 16197
Lubbock, Texas 79490

OR2009-10272

Dear Ms. Manning:

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# 351076.

The Hedley Independent School District (the "district"), which you represent, received a request for a settlement agreement between the district and its superintendent and any documents pertaining to the settlement or to the nonrenewal of the superintendent's contract. You state you have released the settlement agreement. 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.

You state that the information submitted in Exhibit C is the subject of a previous ruling issued by this office. In Open Records Letter No. 2008-13921 (2008), our office held that the information at issue constituted an evaluation that must be withheld under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code. As we have no indication that the pertinent facts and circumstances have changed since the issuance of that prior ruling, we determine that the district must continue to rely on our ruling in Open Records Letter No. 2008-13921 as a previous determination and withhold the information in Exhibit C in accordance with that decision. *See* Open Records Decision No. 673 (2001) (governmental body may rely on previous determination when records or information at issue are precisely same records or information that were previously submitted to this office pursuant to section 552.301(e)(1)(D) of the Government Code; governmental body which received request for records or information is same governmental

body that previously requested and received ruling from attorney general; prior ruling concluded that precise records or information are or are not excepted from disclosure under Act; and law, facts, and circumstances on which prior ruling was based have not changed since issuance of ruling).

You claim the remaining information is excepted from disclosure under section 552.101 of the Government Code. This statute 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, which provides for the confidentiality of documents that evaluate the performance of a teacher or administrator. 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). In Open Records Decision No. 643, we determined 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, as that term is commonly defined, at the time of the evaluation. *See* ORD 643 at 4. Additionally, the Third Court of Appeals has held a written reprimand constitutes an evaluation for purposes of section 21.355. *See Abbott v. North East Indep. Sch. Dist.*, 212 S.W.3d 364 (Tex. App.—Austin, 2006).

You assert the remaining information is confidential under section 21.355. Exhibit E consists of an evaluation of the superintendent by the district's board of trustees. 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. Upon review, we find this information is confidential under section 21.355 of the Education Code and must be withheld under section 552.101 of the Government Code. Exhibit F consists of a notice to the superintendent, required by statute, of the board of trustees' intent not to renew the superintendent's contract. *See* Educ. Code § 21.212 (requiring written notice of proposed contract nonrenewal to superintendent, including reasonable notice of reason for nonrenewal). Upon review, we find that while this notice addresses the superintendent's performance, it does not provide future mandates regarding his performance and does not mention subsequent appraisal of that performance. *See Abbott v. North East Indep. Sch. Dist.* at 368 (memorandum was evaluation for purposes of 21.355 because it reflected supervisor's judgment, gave corrective direction, and provided for further review). Therefore, the information in Exhibit F is not confidential under section 21.355 of the Education Code and the district may not withhold it under section 552.101 of the Government Code.

In summary, the district must continue to rely on our ruling in Open Records Letter No. 2008-13921 as a previous determination and withhold the information in Exhibit C in

accordance with that decision. The district must withhold the information in Exhibit E under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code. The district must release the information in Exhibit F.

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, 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,



Mack T. Harrison
Assistant Attorney General
Open Records Division

MTH/eeg

Ref: ID# 351076

Enc. Submitted documents

c: Requestor
(w/o enclosures)