



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 9, 2010

Mr. Dennis J. Eichelbaum
Schwartz & Eichelbaum, Wardell, Mehl and Hansen, P.C.
5300 Democracy Drive, Suite 200
Plano, Texas 75024

OR2010-05032

Dear Mr. Eichelbaum:

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# 375311.

The Killeen Independent School District (the "district"), which you represent, received a request for the personnel file of a named individual, the district's check registers for the years 2008 and 2009, and information on the district's policies regarding the Act. You state you are releasing some of the requested information to the requestor. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.114, and 552.135 of the Government Code. You also state you have notified the individual whose information is at issue of this request for information and of his right to submit arguments to this office as to why the submitted information should not be released.¹ *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). We have considered the exceptions you claim and reviewed the submitted representative sample of information.² We have also received and considered comments submitted by the requestor and interested third parties. *Id.*

Initially, we address an interested third party's contention that the district did not comply with the procedural requirements of the Act. The interested third party asserts that the district failed to comply with sections 552.301(d) and 552.301(e-1) of the Government Code.

¹We note that, as of the date of this letter, we have not received any comments from this individual.

²We assume that the representative sample of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Pursuant to section 552.301(d), a governmental body must provide the requestor with (1) a written statement that the governmental body wishes to withhold the requested information and has asked for a decision from the attorney general, and (2) a copy of the governmental body's written communication to the attorney general within ten business days of receiving the request for information. Gov't Code § 552.301(d). Section 552.301(e-1) requires a governmental body that submits written comments to the attorney general under subsection (e)(1)(A) to send a copy of those comments to the person who requested the information from the governmental body within fifteen business days of receiving the request for information. *Id.* § 552.301(e-1). An interested third party argues that the district did not provide the requestor with a copy of the district's comments to this office. In this instance, we need not determine whether a procedural violation occurred because sections 552.101, 552.102, 552.114, and 552.135 of the Government Code are mandatory exceptions that constitute compelling reasons sufficient to overcome the presumption of openness caused by the failure to comply with section 552.301. *See id.* §§ 552.301, .302. Accordingly, we will address the district's arguments against disclosure of the submitted information.

Next, we note some of the requested information was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2008-00224 (2008). As we have no indication that the law, facts, and circumstances on which the prior ruling was based have changed, the district must continue to rely on the ruling as a previous determination and withhold or release the information we have marked in accordance with Open Records Letter No. 2008-00224.³ *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in a prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

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 made confidential by statute. Section 21.355 of the Education Code provides that "[a] document evaluating the performance of a teacher or administrator is confidential." 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 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" 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. *See id.* at 4. You contend that the remaining information contains information that is confidential under section 21.355 of the

³As our ruling for this information is dispositive, we need not address your arguments against its disclosure.

Education Code. Upon review of the documents at issue, we agree that some of the remaining information evaluates the performance of an administrator. Accordingly, if the administrator at issue held the appropriate certificate, the district must withhold the information we have marked under section 21.355 of the Education Code. However, we find the remaining information at issue does not evaluate the performance of an administrator for the purposes of section 21.355 and may not be withheld under section 552.101 on this basis.

In summary, the district must continue to rely on Open Records Letter No. 2008-00224 as a previous determination and withhold or release the previously ruled upon information, which we have marked, in accordance with that ruling. The district must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code if the administrator at issue held the appropriate certificate. The remaining information must be released.

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, toll free, at (888) 672-6787.

Sincerely,



Sarah Casterline
Assistant Attorney General
Open Records Division

SEC/eeg

Ref: ID# 375311

Enc. Submitted documents

c: Requestor
(w/o enclosures)