



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 3, 2010

Mr. John A. Kazen
Kazen, Meurer & Perez L.L.P.
P.O. Box 6237
Laredo, Texas 78042-6237

OR2010-06264

Dear Mr. Kazen:

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# 379126.

The Laredo Independent School District (the "district"), which you represent, received a request for memoranda issued to district employees regarding allegations the employees engaged in political activity while at work from August 1, 2009 to the date of the request. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. You state you have notified the employee to whom the requested information relates pursuant to section 552.304 of the Government Code. *See* Gov't Code § 552.304 (any person may submit written comments stating why information at issue in request for Attorney General ruling should or should not be released). As of the date of this letter, we have not received any arguments from the interested employee regarding the information at issue. We have considered the exception you claim and reviewed the submitted information.

Initially, we must address the district's procedural obligations under the Act. Section 552.301 of the Government Code describes the procedural obligations placed on a governmental body that receives a written request for information it wishes to withhold. Pursuant to section 552.301(b), the governmental body must ask for the attorney general's decision and state the exceptions that apply within ten business days after receiving the request. *See id.* § 552.301(a), (b). In this instance, you state the district received the request for information on February 11, 2010. However, you did not request a ruling from this office

until March 9, 2010, more than ten business days after receiving the request for information. You state the district attempted to inform the requestor that additional time would be needed to produce the requested information. However, even in the event the requestor had agreed to an extension for the district to fulfill the request for information, the deadlines prescribed by section 552.301 are fixed by statute and cannot be altered by agreement. *See* Attorney General Opinion JM-672 (1987); Open Records Decision Nos. 541 at 3 (1990) (obligations of a governmental body under predecessor to Act cannot be compromised simply by decision to enter into contract), 514 at 1-2 (1988). Therefore, the district was required to seek a ruling by February 26, 2010. Because the district did not seek a ruling until March 9, 2010, we find the district failed to comply with the requirements of section 552.301.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption the information at issue is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See* Gov't Code § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); *see also* Open Records Decision No. 630 (1994). Normally, a compelling interest is demonstrated when some other source of law makes the information at issue confidential or third-party interests are at stake. *See* Open Records Decision No. 150 at 2 (1977). Because section 552.101 is a mandatory exception to disclosure, we will consider your arguments under this exception.

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, such as 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 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 "teacher" means a person who is required to, and does in fact, hold a teaching certificate under subchapter B of chapter 21 of the Education Code or a school district teaching permit under section 21.055, and who is engaged in the process of teaching, as that term is commonly defined, at the time of the evaluation. *See* ORD 643 at 4. 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, no pet.).

You raise section 21.355 for the submitted letter of reprimand. Although we find the letter of reprimand constitutes an evaluation for purposes of section 21.355, you do not state, or provide documentation showing, the district employee whose evaluation is at issue held a

teaching certificate under subchapter B of chapter 21 of the Education Code at the time of the evaluation. Furthermore, you do not state, or provide documentation showing, the district employee at issue was engaged in the process of teaching at the time of the evaluation. To the extent the employee at issue held the requisite certificate and was engaged in the process of teaching at the time of the evaluation, the submitted letter of reprimand is confidential under section 21.355 and the district must withhold it under section 552.101. However, if the employee at issue did not hold a teaching certificate and was not engaged in the process of teaching at the time of the evaluation, the submitted letter of reprimand is not confidential under section 21.355 and may not be withheld under section 552.101 on such basis. In that instance, we address your remaining argument.

Section 552.101 of the Government Code also encompasses the common-law right of privacy, which protects information that is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976). Generally, the public has a legitimate interest in information that relates to public employment and public employees, and information that pertains to an employee's actions as a public servant generally cannot be considered beyond the realm of legitimate public interest. See Open Records Decisions Nos. 562 at 10 (1990) (personnel file information does not involve most intimate aspects of human affairs, but in fact touches on matters of legitimate public concern); 542 (1990); 470 at 4 (1987) (public has legitimate interest in job qualifications and performance of public employees); 444 at 5-6 (1986) (public has legitimate interest in knowing reasons for dismissal, demotion, promotion, or resignation of public employees); 423 at 2 (1984) (scope of public employee privacy is narrow). The submitted letter of reprimand pertains to a public employee and his conduct within the workplace. Upon review, we find no portion of the submitted letter of reprimand is highly intimate or embarrassing or is not of legitimate public interest. Therefore, the district may not withhold any portion the submitted letter of reprimand under section 552.101 on the basis of common-law privacy.

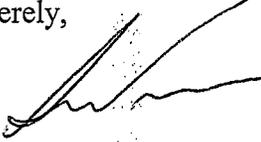
In summary, if the employee at issue held the requisite certificate and was engaged in the process of teaching at the time of the evaluation, the district must withhold the submitted letter of reprimand under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code. If the employee at issue did not hold a teaching certificate and was not engaged in the process of teaching at the time of the evaluation, the district must release the submitted letter of reprimand.

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,



Ana Carolina Vieira
Assistant Attorney General
Open Records Division

ACV/eeg

Ref: ID# 379126

Enc. Submitted documents

c: Requestor
(w/o enclosures)