



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 14, 2010

Ms. Andrea Sheehan
Ms. Elisabeth A. Donley
Law Offices of Robert E. Luna, P.C.
4411 North Central Expressway
Dallas, Texas 75205

OR2010-08590

Dear Ms. Sheehan and Ms. Donley:

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# 388244.

The Carrollton-Farmers Branch Independent School District (the "district"), which you represent, received a request for expense reports and performance reviews for a former district superintendent during specified time periods. 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.

Initially, you inform us the district requested clarification of the portion of the request pertaining to expense reports. *See* Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information). You state the district had not yet received a response to its request for clarification as of the date you requested this decision. Accordingly, the district has no obligation at this time to release any information that might be responsive to this portion of the request. But if the district receives clarification and wishes to withhold any of the information encompassed by the clarified request, then you must request another decision from this office. *See id.* §§ 552.301, .302; *see also City of Dallas v. Abbott*, 304 S.W.3d 380 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

You state that the submitted information was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2009-02605 (2009). You explain that, while the requestor in Open Records Letter No. 2009-02605 had a right of access to the information at issue, this request involves a different requestor with no special right of access to the information. Thus, you acknowledge that the circumstances

have changed, and the district may not continue to rely on Open Records Letter No. 2009-02605 as a previous determination in this instance. *See* Open Records Decision No. 673 (2001). Accordingly, we will address your arguments against the disclosure of the information at issue.

Section 552.101 of the Government Code exempts 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. Section 21.355 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 an administrator. *See* Open Records Decision No. 643 (1996). In Open Records Decision No. 643, this office also concluded that an administrator is someone who is required to hold and does hold a certificate required under chapter 21 of the Education Code and is administering at the time of his or her evaluation. *Id.* at 4. You state that the individual at issue 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. You contend that the submitted information constitutes an evaluation for the purpose of section 21.355 of the Education Code. Upon review, we agree that the submitted information is confidential under section 21.355 of the Education Code. Thus, the district must withhold the submitted information under section 552.101 of the Government Code 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, 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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/dls

Ref: ID# 388244

Enc. Submitted documents

c: Requestor
(w/o enclosures)