



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 25, 2010

Ms. Sandra D. Carpenter  
Walsh, Anderson, Brown, Gallegos & Green, P.C.  
P.O. Box 168046  
Irving, Texas 75016

OR2010-09387

Dear Ms. Carpenter:

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# 384382.

The La Marque Independent School District (the "district"), which you represent, received a request for six categories of information pertaining to the district's recent reduction in force. You state the district has released a portion of the requested information. You claim 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 representative sample of 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. Section 552.101 encompasses information protected by other statutes, including section 21.355 of the Education Code, which provides that "[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

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<sup>1</sup>We assume 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.

Records Decision No. 643 at 3 (1996). In Open Records Decision No. 643, we determined that a "teacher" for purposes of section 21.355 means a person who (1) 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 (2) is engaged in the process of teaching, as that term is commonly defined, at the time of the evaluation. *See id.* at 4. We also determined that an "administrator" for purposes of section 21.355 means a person who (1) is required to and does in fact hold an administrator's certificate under subchapter B of chapter 21 of the Education Code and (2) is performing the functions of an administrator, as that term is commonly defined, at the time of the evaluation. *Id.* at 4.

You assert that the submitted information consists of evaluations that are confidential under section 21.355. Upon review, we agree these documents evaluate, as the term is commonly understood, the performance of these individuals. We note that one of the evaluations pertains to a district facilities foreman. Because this individual was not a teacher or administrator at the time of the evaluation, we conclude this individual's evaluation, which we marked, is not confidential under section 21.355, and may not be withheld under section 552.101. With respect to the remaining submitted evaluations, you do not state or provide any documentation showing whether the employees who were the subject of these evaluations held a teacher's certificate or permit or administrator's certificate under subchapter B of chapter 21 of the Education Code and were performing the functions of a teacher or administrator at the time of the evaluations. *See* Gov't Code § 552.301(e)(1)(A) (requiring the governmental body to explain the applicability of the raised exception). Thus, we are unable to conclude that section 21.355 is applicable to the remaining information and we must rule conditionally. To the extent the remaining district employees whose evaluations you submitted held a teacher's certificate or permit or an administrator's certificate and were performing the functions of a teacher or administrator at the time of the evaluations, the evaluations are confidential under section 21.355 of the Education Code, and must be withheld under section 552.101 of the Government Code. However, to the extent these employees do not satisfy these criteria, the evaluations are not confidential under section 21.355 of the Education Code and must be released, along with the facilities foreman evaluation, in their entirety.

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

Sincerely,

A handwritten signature in black ink, appearing to read "Bob Davis", with a long, sweeping underline that extends to the right.

Bob Davis  
Assistant Attorney General  
Open Records Division

RSD/eeg

Ref: ID# 384382

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)