



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 27, 2010

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

OR2010-11257

Dear 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#388267.

The Lewisville Independent School District (the "district"), which you represent, received a request for the redacted portion of a document released to the requestor in response to a prior request for information. You claim that the information responsive to the present request is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information. We have also received and considered comments submitted by the requestor. *See* Gov't Code § 552.304 (interested party may submit written comments regarding availability of requested information).

Initially, we address the requestor's assertion that the district did not comply with section 552.301 of the Government Code in response to her first request. Section 552.301 prescribes the procedures a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Section 552.301(b) requires that a governmental body ask for a decision from this office and state which exceptions apply to the requested information by the tenth business day after receiving the request. Gov't Code § 552.301(b). In her initial request, the requestor sought a copy of an

e-mail sent by a named individual on March 29, 2010 that required teachers/staff to sign and return the document by March 30, 2010, including all signed copies of the document returned to the administrative team, and any correspondence related to this e-mail between March 29, 2010 and April 16, 2010. You inform us that the district redacted information that was not responsive to the prior request and released responsive information to the requestor. The requestor asserts the district failed to comply with section 552.301(b) because it did not release all the information and did not seek a decision for the information the district withheld. The district asserts, and we agree, the information now at issue is not the previously requested e-mail, document that teachers/staff were to sign and return, or correspondence related to this e-mail. The district need not release nonresponsive information in response to a request. Thus, the information now at issue was not responsive to the first request. We therefore conclude the district did not violate section 552.301(b) of the Government Code with regard to the first request because the information now at issue was not responsive to the first request.

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. 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 an administrator. *See* Open Records Decision No. 643 (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 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.

You state the requested information relates to a teacher who held a teaching certificate and was teaching at the time of the evaluation. Based on your representation and our review, we agree the information you have marked consists of a teacher evaluation subject to section 21.355. Accordingly, the district must withhold the information you have marked 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,



Vanessa Burgess
Assistant Attorney General
Open Records Division

VB/jb

Ref: ID#388267

Enc. Submitted documents

c: Requestor
(w/o enclosures)