



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 13, 2010

Ms. Ylise Janssen
Senior School Law Attorney
Office of the General Counsel
Austin Independent School District
1111 West Sixth Street, Room A-240
Austin, Texas 78703-5399

OR2010-12342

Dear Ms. Janssen:

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# 390354.

The Austin Independent School District (the "district") received a request for the evaluation documents and VAL-ED surveys pertaining to a named employee for a specified time period. You state the district does not have information responsive to the request for the evaluation documents.¹ 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.

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 administrator. *See* Open Records Decision No. 643 (1996). In Open Records Decision No. 643, this office also concluded that

¹We note the Act does not require a governmental body to disclose information that did not exist at the time the request was received. *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Attorney General Opinion H-90 (1973); Open Records Decision Nos. 452 at 2-3 (1986), 342 at 3 (1982), 87 (1975); *see also* Open Records Decision Nos. 572 at 1 (1990), 555 at 1-2 (1990), 416 at 5 (1984).

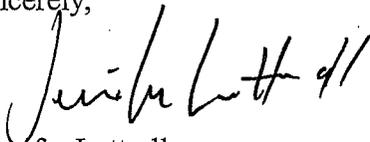
an administrator is someone who is required to hold and does hold a certificate required under chapter 21 of the Education Code and is administering at the time of his or her evaluation. *Id.* at 4.

You contend the submitted information, consisting of VAL-ED surveys, constitutes evaluations for the purposes of section 21.355 of the Education Code. You argue the submitted VAL-ED surveys evaluate the named employee's performance as an administrator and should receive the same protection as formal evaluations. You state, and provide documentation showing, that the employee at issue held an administrator certificate under subchapter B of chapter 21 of the Education Code at the time of the evaluations. Upon review, we agree that the submitted VAL-ED surveys consist of evaluations of the named administrator. Accordingly, we find that the submitted information is subject to section 21.355 of the Education Code, and the district must withhold the submitted information under section 552.101 of the Government 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,



Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/dls

Ref: ID# 390354

Enc. Submitted documents

c: Requestor
(w/o enclosures)