

The ruling you have requested has been modified pursuant to a court order. The court judgment has been attached to this document.



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 14, 2010

Mr. Thomas E. Meyers
Brackett and Ellis
100 Main Street
Fort Worth, Texas 76102-3090

OR2010-13919

Dear Mr. Meyers:

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# 393284.

The Eagle Mountain-Saginaw Independent School District (the "district"), which you represent, received a request for the employee evaluations of a former superintendent and any communications regarding the superintendent's resignation.¹ You claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have also received comments from the former superintendent's attorney. *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). We have considered the submitted arguments 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 exception encompasses information that other statutes make confidential. The district and the former superintendent's attorney raise section 552.101 in conjunction with 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. In Open Records Decision No. 643 (1996), this office 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* ORD 643 at 3. Additionally, we

¹We note the district sought and received clarification of this request. *See* Gov't Code § 552.222(b) (stating if information requested is unclear to governmental body or if large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used).

determined that for the purposes of section 21.355, the word "administrator" means a person who is required to and does in fact hold an administrator's certificate under subchapter B of chapter 21 of the Education Code, and is performing the functions of an administrator, as that term is commonly defined, at the time of the evaluation. *See id.* at 4. We note the Third Court of Appeals has concluded that a written reprimand constitutes an evaluation for the purposes of section 21.355 because "it reflects the principal's judgment regarding [a teacher's] actions, gives corrective direction, and provides for further review." *Abbott v. North East Indep. Sch. Dist.*, 212 S.W.3d 364 (Tex. App.—Austin 2006, no pet.).

You contend that the submitted information constitutes confidential evaluations of the superintendent by the district's Board of Trustees (the "board"). You inform us that the superintendent to whom the submitted information relates was a certified administrator at the time the evaluations were prepared. Upon review of the information at issue, we conclude Exhibits B and E and a portion of Exhibit C, which we have marked, are confidential under section 21.355 of the Education Code and must be withheld under section 552.101 of the Government Code on that basis. However, we find you have failed to demonstrate how the remaining information in Exhibit C, which consists of a cover letter for a personal development plan, and Exhibits D and F, which consist of the superintendent's responses to the personal development plan and to a written reprimand from the board, constitute evaluations for the purpose of section 21.355 of the Education Code. Accordingly, the remaining information may not be withheld under section 552.101 on that basis. As no further exceptions to disclosure have been raised, the remaining information must be released.

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,



Kate Hartfield
Assistant Attorney General
Open Records Division

KH/em

Ref: ID# 393284

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Mr. Cory S. Hartfield
Adams, Lynch & Loftin, P.C.
3950 Highway 360
Grapevine, Texas 76051-6741
(w/o enclosures)

Filed in The District Court
of Travis County, Texas

MAY 23 2011 LL

CAUSE NO. D-1-GN-10-003411

At 1:40 P.M.
Amalia Rodriguez-Mendoza, Clerk

EAGLE MOUNTAIN-SAGINAW
INDEPENDENT SCHOOL DISTRICT
AND DR. JIM CHADWELL, IN HIS
OFFICIAL CAPACITY AS THE
SUPERINTENDENT AND OFFICER
FOR PUBLIC INFORMATION,
Plaintiffs

IN THE DISTRICT COURT

V.

353rd JUDICIAL DISTRICT

GREG ABBOTT, ATTORNEY
GENERAL FOR THE STATE OF
TEXAS,

Defendant

TRAVIS COUNTY, TEXAS

FINAL JUDGEMENT

On April 28, 2011, the Court considered the Motion for Summary Judgment filed by Plaintiffs Eagle Mountain-Saginaw Independent School District and Dr. Jim Chadwell, In His Official Capacity as the Superintendent and Officer for Public Information ("Plaintiffs"), and Cross-Motion for Summary Judgment filed by Defendant Greg Abbott, Attorney General for the State of Texas ("Defendant"). The parties appeared represented by counsel. In addition, attorney William Bednar appeared as Amicus Curiae on behalf of the Texas Association of School Boards Legal Assistance Fund, in support of Plaintiffs' Motion for Summary Judgment. After hearing arguments of counsel, and considering the evidence submitted, the Court hereby enters the following rulings on the parties' Motions for Summary Judgment.

The Court finds that Plaintiffs Motion for Summary Judgment should be granted in part, and denied in part. The Court holds that Exhibit D, submitted by the parties under seal pursuant to an Agreed Protective Order, the response of Dr. Cole Pugh to a Personal Development Plan provided to him by Plaintiff's Board of Trustees, is confidential under Texas Government Code §552.101 and

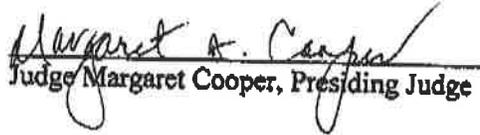
Texas Education Code §21.355 as a document evaluating the performance of an administrator and may be withheld from production in a response to a Public Information Act request. The Court further finds and holds that portions of the first page of Exhibit C, the transmittal letter to Dr. Pugh from Plaintiff's Board of Trustees, and Exhibit F, Dr. Pugh's response to a communication from Plaintiff's Board of Trustees, are confidential in part under Texas Government Code §552.101 and Texas Education Code §21.355 to the extent that those documents quote from and contain evaluations of Dr. Pugh's performance as an administrator and may be withheld from production in response to a Public Information Act request. The Court finds and holds that those confidential portions of those two documents shall be redacted, but that all remaining portions which are not confidential under Texas Government Code §552.101 and Texas Education Code §21.355 may not be withheld from production to a Public Information Act request. All such other relief requested in Plaintiffs' Motion for Summary Judgment is hereby denied.

The Court finds and holds that Defendant Abbott's Cross-Motion for Summary Judgment should be granted in part and denied in part. The Court denies Defendant Abbott's request that Exhibit D be found to not be confidential under Texas Government Code §552.101 and Texas Education Code §21.355. The Court grants Defendant Abbott's request that all relief requested by Plaintiff under the Texas Declaratory Judgment Act, Chapter 37, Texas Civil Practice and Remedies Code, be dismissed, since all remedies requested pursuant to the Declaratory Judgment Act are redundant of those provided in Texas Government Code Chapter 552. The Court grants in part Defendant Abbott's request that the transmittal letter attached to Exhibit C and Exhibit F be held to not be confidential under the Texas Public Information Act and therefore subject to production. The Court orders that all portions of the transmittal letter attached to Exhibit C and Exhibit F be redacted to delete those portions of the documents which evaluate the performance of an

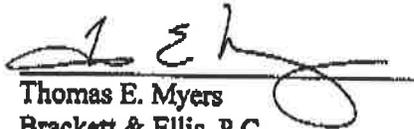
administrator, Dr. Cole Pugh. All other relief requested by Defendant Abbott in his Motion for Summary Judgment is hereby denied.

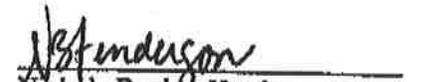
All attorneys fees and costs of court shall be borne by the parties. To the extent that this Final Judgment conflicts with Attorney General Letter Ruling OR 2010-13919, this judgment shall prevail. All relief not expressly granted herein to either party is denied. This Final Judgment finally disposes of all claims between Plaintiffs Eagle Mountain-Saginaw Independent School District and Dr. Jim Chadwell, In His Official Capacity as the Superintendent and Officer for Public Information, and Defendant Greg Abbott, Attorney General for the State of Texas, and is a final judgment.

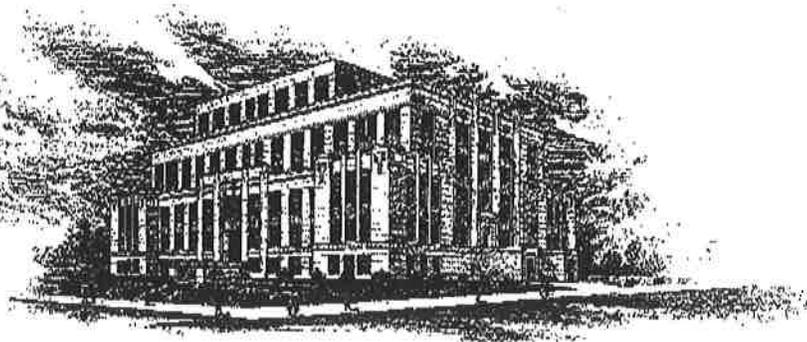
Signed this 20 day of May, 2011.


Judge Margaret Cooper, Presiding Judge

Approved as to Form:


Thomas E. Myers
Brackett & Ellis, P.C.
100 Main Street
Fort Worth, Texas 76102
Telephone: (817) 338-1700
Facsimile: (817) 870-2265
Attorney for Plaintiffs


Nichole Bunker-Henderson
Assistant Attorney General
Office of the Texas Attorney General
PO Box 12548
Austin, Texas 78711-2548
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Facsimile: (512) 320-0167
Attorney for Defendant



OFFICE OF THE DISTRICT JUDGES

Travis County Court House
P.O. Box 1748
Austin, Texas 78767
(512) 854-9300

May 23, 2011

Ms. Nichole Bunker-Henderson
Via Facsimile: (512) 320-0167

Mr. Thomas E. Myers
Via Facsimile: (817) 870-2265

Re: Cause No. D-1-GN-10-003411; *Eagle Mountain-Saginaw Independent School District and Dr. Jim Chadwell, in his Official Capacity as the Superintendent and Officer for Public Information vs. Greg Abbott, Attorney General for the State of Texas*; in the 353rd Judicial District, Travis County, Texas

Dear Counsel:

Please find enclosed a copy of Order on Final Judgment signed by Judge Cooper. The original order has been filed with the District Clerk's office. Please provide copies to all parties of record in this case.

Sincerely,

A handwritten signature in cursive script that reads "Nancy Herrera".

Nancy Herrera
Judicial Aide
Civil District Courts

Orig: Ms. Amalia Rodriguez-Mendoza, Travis County District Clerk

Amalia Rodriguez-Mendoza
District Clerk, Travis County
Travis County Courthouse Complex
P.O. Box 679003
Austin, Texas 78767

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EPAL



Eagle mtg ISD

DATE: May 24, 2011

BUNKER-HENDERSON NICHOLE BETH
ASSISTANT ATTORNEY GENERAL
ENVIRONMENTAL PROTECTION AND ADMINISTRATIVE LAW DIVISION P.O. BOX
12548
AUSTIN, TX 78711

FINAL JUDGMENT

D-1-GN-10-003411

EAGLE MOUNTAIN-SAGINAW INDEPENDENT SCHOOL DISTRICT AND WELDON HAFLEY,
IN HIS OFFICIAL CAPACITY AS THE OFFICER FOR PUBLIC INFORMATION
VS.

GREGG ABBOTT, ATTORNEY GENERAL FOR THE STATE OF TEXAS

You are hereby notified that the above order has been signed and entered MAY 23, 2011 in the 353RD JUDICIAL DISTRICT COURT of Travis County Texas in the above numbered and entitled cause.

AMALIA RODRIGUEZ-MENDOZA,
District Clerk

L60 - 21498

D-1-GN-10-003411

LTJ