



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 10, 2010

Mr. Humberto Aguilera
Escamilla, Poneck & Cruz, L.L.P.
For United Independent School District
700 North St. Mary's Street, Suite 850
San Antonio, Texas 78205

OR2010-18545

Dear Mr. Aguilera:

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# 402681.

The United Independent School District (the "district"), which you represent, received a request for any documents provided to the district's trustees for their evaluation of the superintendent and for information related to the superintendent's compensation. You state some of the information has been released. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.116 of the Government Code. We have considered the exceptions 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. Section 552.101 encompasses section 21.355 of the Education Code, which provides, "[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. Open Records Decision No. 643 (1996). This office has determined that the word "administrator" in section 21.355 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. *Id.*

You state the superintendent holds certification under subchapter B of chapter 21 of the Education Code, and the submitted information was prepared for the purposes of evaluating his performance as an administrator. Thus, you argue all of the submitted information constitutes an evaluation for the purposes of section 21.355 of the Education Code. Upon review, however, we find only the information we have marked constitutes an evaluation for purposes of section 21.355. Accordingly, this information is confidential under section 21.355 and must be withheld pursuant to section 552.101 of the Government Code. The remaining information consists of background information used to conduct the evaluation. You have failed to demonstrate how the remaining information constitutes an evaluation for purposes of section 21.355; thus, it may not be withheld under section 552.101 on that basis.

We next turn to your argument under section 552.116 of the Government Code for the remaining information. Section 552.116 of the Government Code provides:

(a) An audit working paper of an audit of the state auditor or the auditor of a state agency, an institution of higher education as defined by Section 61.003, Education Code, a county, a municipality, a school district, or a joint board operating under Section 22.074, Transportation Code, including any audit relating to the criminal history background check of a public school employee, is excepted from the requirements of Section 552.021. If information in an audit working paper is also maintained in another record, that other record is not excepted from the requirements of Section 552.021 by this section.

(b) In this section:

(1) 'Audit' means an audit authorized or required by a statute of this state or the United States, the charter or an ordinance of a municipality, an order of the commissioners court of a county, a resolution or other action of a board of trustees of a school district, including an audit by the district relating to the criminal history background check of a public school employee, or a resolution or other action of a joint board described by Subsection (a) and includes an investigation.

(2) 'Audit working paper' includes all information, documentary or otherwise, prepared or maintained in conducting an audit or preparing an audit report, including:

(A) intra-agency and interagency communications; and

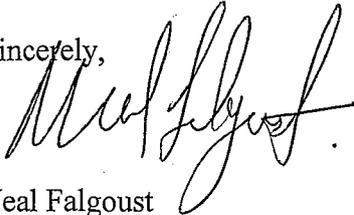
(B) drafts of the audit report or portions of those drafts.

Gov't Code § 552.116. For the purposes of section 552.116, a school district must establish that an audit is authorized or required by a resolution or other action of a board of trustees of a school district. You assert the remaining information consists of documents used to conduct an annual evaluation of the superintendent. Upon review, however, we find you have not demonstrated how the remaining information was prepared or is maintained in relation to an audit authorized or required by any of the laws or authorities specified in section 552.116(b)(1). Accordingly, the district may not withhold the remaining information under section 552.116 of the Government Code. As you assert no other exceptions to disclosure, 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,



Neal Falgoust
Assistant Attorney General
Open Records Division

NF/tf

Ref: ID# 402681

Enc. Submitted documents

c: Requestor
(w/o enclosures)