



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 7, 2011

Mr. Philip D. Fraissinet  
Attorney for Montgomery Independent School District  
Thompson & Horton, LLP  
711 Louisiana Street, Suite 2100  
Houston, Texas 77002-2746

OR2011-00434

Dear Mr. Fraissinet:

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# 405433.

The Montgomery Independent School District (the "district"), which you represent, received a request for specified personnel records and emails concerning a named district employee. You state that some information has been released to the requestor. You claim that portions of the requested information are not public information subject to the Act. You assert that the remaining requested information is excepted from disclosure under section 552.101 of the Government Code. We have received comments from an attorney representing the district employee at issue. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). We have considered the submitted arguments and reviewed the submitted information, a portion of which consists of a representative sample.<sup>1</sup>

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<sup>1</sup> We assume that 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.

Initially, we address the assertion that the e-mails contained in Exhibit C are not public information subject to the Act. The Act is applicable only to "public information." See Gov't Code §§ 552.002, .021. Section 552.002 provides, in relevant part:

(a) In [the Act], "public information" means information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

(1) by a governmental body; or

(2) for a governmental body and the governmental body owns the information or has a right of access to it.

*Id.* § 552.002(a). Thus, virtually all of the information in a governmental body's physical possession constitutes public information and thus is subject to the Act. *Id.* § 552.002(a)(1); see Open Records Decision Nos. 549 at 4 (1990), 514 at 1-2 (1988). You claim that the e-mails in Exhibit C are personal in nature and do not pertain to official business of the district. Based on your representations and our review, we conclude that Exhibit C does not constitute public information for the purposes of section 552.002. See Open Records Decision No. 635 at 4 (1995) (section 552.002 not applicable to personal information unrelated to official business and created or maintained by state employee involving *de minimis* use of state resources). Therefore, Exhibit C is not subject to the Act and the district is not required to release it.

We now address your argument that Exhibit B is excepted from disclosure under section 552.101 of the Government Code. This section 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, such as 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 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 at 3 (1996). We have further concluded that a "teacher" for purposes of section 21.355 means a person who (1) is required to, and does in fact, hold a certificate or permit required under chapter 21 of the Education Code and (2) is teaching at the time of his or her evaluation. *Id.* You contend that Exhibit B constitutes a confidential evaluation of a teacher by the district. You inform us, and provide documentation showing, that the teacher was certified by the State Board for Educator Certification and was acting as a teacher at the time the evaluation was prepared. Based on your representations and our review, we conclude that the information we have marked in Exhibit B is 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 that you

have not demonstrated that the remaining information in Exhibit B constitutes an evaluation of a teacher. As you have raised no other exceptions for this information, it must be released.

In summary, Exhibit C is not public information subject to the Act, and the district need not release it to this requestor. The information we have marked in Exhibit B must be withheld under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code. The remaining information in Exhibit B 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](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,



Misty Haberer Barham  
Assistant Attorney General  
Open Records Division

MHB/eeg

Ref: ID# 405433

Enc. Submitted documents

c: Requestor  
(w/o enclosures)