



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 31, 2011

Mr. Robert Russo  
Walsh, Anderson, Brown, Gallegos and Green, P.C.  
P.O. Box 460606  
San Antonio, Texas 78246

OR2011-01581

Dear Mr. Russo:

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# 407436.

The Fort Sam Houston Independent School District (the "district"), which you represent, received a request for information relating to an employment reference regarding the requestor. You claim the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the information you submitted.

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 other statutes make confidential. You claim 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. 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 at 3 (1996). In Open Records Decision No. 643, we determined the word "teacher," for purposes of section 21.355, means a person who is required to and does in fact hold a teaching certificate under subchapter B of chapter 21 of the Education Code and is engaged in the process of teaching, as that term is commonly defined, at the time of the evaluation. *See id.* at 4.

You contend the submitted professional reference form is confidential under section 21.355. You state the form pertains to an individual who has applied for a teaching position with the district. You also indicate the individual concerned has applied for certification to teach in Texas but had yet to obtain a Texas certificate when the district received this request for

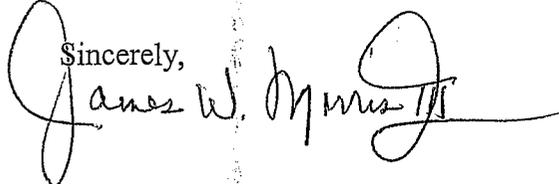
information. Having considered your representations, we find you have not demonstrated the submitted form pertains to a teacher for purposes of section 21.355. *See* ORD 643 at 4. We therefore conclude the information at issue is not confidential under section 21.355 of the Education Code and may not be withheld from the requestor on that basis under section 552.101 of the Government Code.

We note the submitted form contains an e-mail address. Section 552.137 of the Government Code states that “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under [the Act],” unless the owner of the e-mail address has affirmatively consented to its public disclosure or the e-mail address falls within the scope of section 552.137(c).<sup>1</sup> Gov’t Code § 552.137(a)-(c). The district must withhold the e-mail address we have marked under section 552.137 of the Government Code, unless the owner of the e-mail address has affirmatively consented to its disclosure.<sup>2</sup> The district must release the rest of the submitted information to the requestor.

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,



James W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/em

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<sup>1</sup>This office will raise section 552.137 on behalf of a governmental body, as this exception is mandatory and may not be waived. *See* Gov’t Code §§ 552.007, .352; Open Records Decision No. 674 at 3 n.4 (2001) (mandatory exceptions).

<sup>2</sup>We note this office issued Open Records Decision No. 684 (2009), a previous determination authorizing all governmental bodies to withhold ten categories of information, including an e-mail address of a member of the public under section 552.137, without the necessity of requesting an attorney general decision.

Ref: ID# 407436

Enc: Submitted documents

c: Requestor  
(w/o enclosures)