



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 27, 2011

Mr. Miles J. LeBlanc
Assistant General Counsel
Houston Independent School District
440 West 18th Street
Houston, Texas 77092-8501

OR2011-05777

Dear Mr. LeBlanc:

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# 415537.

The Houston Independent School District (the "district") received a request for several categories of information regarding a named individual and a specified middle school. You state you are releasing some of the requested information. You indicate you do not maintain some of the information responsive to the request.¹ You claim 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.

Initially, we must address the applicability of section 552.007 of the Government Code to the submitted information. You indicate the submitted information was previously released to the public. Section 552.007 provides that if a governmental body voluntarily releases information to any member of the public, the governmental body may not withhold such information from further disclosure unless its public release is expressly prohibited by law or the information is made confidential by law. *See Gov't Code § 552.007; see also Open*

¹We note that the Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.— San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

Records Decision Nos. 518 at 3 (1989), 490 (1988), 400 (1983) (governmental body may waive right to claim permissive exceptions to disclosure under the Act, but it may not disclose information made confidential by law). In this instance, the district raises section 552.101 of the Government Code, which governs information considered to be confidential by law. *See* Gov't Code § 552.101. Thus, regardless of whether the information at issue has previously been released, we must address whether the submitted information is made confidential by law and must now be withheld pursuant to section 552.101 of the Government Code.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* 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 an administrator. *See* Open Records Decision No. 643 (1996). In Open Records Decision No. 643, we determined for purposes of section 21.355, 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. *See* ORD 643 at 4. The Third Court of Appeals has held a written reprimand constitutes an evaluation for purposes of section 21.355. *See North East Indep. Sch. Dist. v. Abbott*, 212 S.W.3d 364 (Tex. App.—Austin 2006, no pet.).

You assert the submitted information is confidential under section 21.355. Upon review, we agree the submitted letter of reprimand is a teacher evaluation for purposes of section 21.355. You state the information at issue pertains to a district employee who is a certified administrator and was performing the functions of an administrator at the time of the reprimand. Based upon your representations and our review, we conclude the information at issue is confidential under section 21.355 of the Education Code. Accordingly, the district must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 21.355 of the Education 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,



Paige Lay
Assistant Attorney General
Open Records Division

PL/eeg

Ref: ID# 415537

Enc. Submitted documents

cc: Requestor
(w/o enclosures)