



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 30, 2011

Ms. Sarah W. Langlois
Counsel for Spring Branch Independent School District
Ogden, Gibson, Broocks, Longoria & Hall, L.L.P.
711 Louisiana Street, Suite 1900
Houston, Texas 77002

OR2011-12525

Dear Ms. Langlois:

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# 428379.

The Spring Branch Independent School District (the "district"), which you represent, received requests from four different requestors for the employee comment sections of the 2010-2011 five-year educational plan surveys pertaining to several named campuses. You state the district has provided some of the requested information to the requestors. You claim portions of the submitted survey employee comments are excepted from disclosure under section 552.101 of the Government Code. We have considered the exception 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. This section encompasses information made confidential by other statutes, such as 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 "teacher" 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 or a school district teaching permit under section 21.055, and who is engaged in the process of teaching, as that term is commonly defined, at the time of the evaluation. *See* ORD 643 at 4. We also determined 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.*

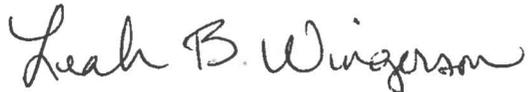
You contend some of the submitted educational plan survey employee comments evaluate district teachers and campus administrators in the performance of their duties. Although the survey gave campus employees the opportunity to provide comments regarding the strengths of their campuses and any additional comments regarding their campuses, the employee's comments cannot be categorized or perceived as evaluations of the performance of campus teachers or administrators. Consequently, we find you have failed to demonstrate how the information at issue consists of evaluations of teachers or administrators as contemplated by section 21.355 of the Education Code. Therefore, the district may not withhold the employee comments at issue under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code.

You assert some of the employee comments at issue are confidential under constitutional privacy. Section 552.101 also encompasses the doctrine of constitutional privacy, which consists of two interrelated types of privacy: (1) the right to make certain kinds of decisions independently and (2) an individual's interest in avoiding disclosure of personal matters. Open Records Decision No. 455 at 4 (1987). The first type protects an individual's autonomy within "zones of privacy," which include matters related to marriage, procreation, contraception, family relationships, and child rearing and education. *Id.* The second type of constitutional privacy requires a balancing between the individual's privacy interests and the public's need to know information of public concern. *Id.* The scope of information protected is narrower than under the common-law doctrine of privacy; the information must concern the "most intimate aspects of human affairs." *Id.* at 5 (citing *Ramie v. City of Hedwig Village, Texas*, 765 F.2d 490 (5th Cir. 1985)). In this instance, you have not provided any arguments explaining how the information at issue pertains to the zones of privacy. Furthermore, we find the public's need to know information relating to the job performance of government employees generally outweighs an individual's privacy interests for purposes of constitutional privacy. Thus, we find you have not demonstrated how any portion of the information you seek to withhold falls within the zones of privacy or implicates an individual's privacy interests for purposes of constitutional privacy. Consequently, the district may not withhold any of the information at issue under section 552.101 of the Government Code in conjunction with constitutional privacy. As you have not claimed any other exceptions to disclosure, the district must release the submitted information.

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,

A handwritten signature in cursive script that reads "Leah B. Wingerson".

Leah B. Wingerson
Assistant Attorney General
Open Records Division

LBW/dls

Ref: ID# 428379

Enc. Submitted documents

c: 4 Requestors
(w/o enclosures)