



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 14, 2011

Ms. Ylise Janssen
Senior School Law Attorney
Austin Independent School District
1111 West Sixth Street
Austin, Texas 78703

OR2011-13280

Dear Ms. Janssen:

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# 429858.

The Austin Independent School District (the "district") received a request for all records pertaining to the requestor, including all reference checks. You claim that 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.

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 protected by other statutes. Section 21.355 of the Education Code provides "[a] document evaluating the performance of a teacher or administrator is confidential." Act of May 25, 2011, 82nd Leg., R.S., H.B. 2971, § 1 (to be codified as Educ. Code § 21.355(a)). 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. *See* Open Records Decision No. 643 (1996). For the purposes of section 21.355, a teacher is someone who is required to, and does in fact, hold a teaching certificate or permit required under chapter 21 of the Education Code and who is engaged in the process of teaching at the time of the evaluation. *See id.* at 4.

You state the submitted information consists of teaching assessment, administrator assessment, and non-teaching professional assessment forms that represent evaluations of the requestor in her capacity as a teacher, which were completed pursuant to the requestor's application for non-teaching positions with the district. You contend this information constitutes evaluations for the purposes of section 21.355 of the Education Code. You state, and provide documentation showing, the teacher at issue held the appropriate certificate under subchapter B of chapter 21 of the Education Code and was performing the functions of a teacher at the time of the evaluations. Upon review, we agree some of the information, which we have marked, 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 you have failed to demonstrate how the remaining information constitutes evaluations for purposes of section 21.355 of the Education Code. Accordingly, the remaining information may not be withheld under section 552.101 on that basis. As no further exceptions to disclosure are raised, 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,

A handwritten signature in black ink, appearing to read 'Sarah Casterline', followed by a large, stylized flourish or scribble.

Sarah Casterline
Assistant Attorney General
Open Records Division

SEC/eb

Ref: ID# 429858

Enc. Submitted documents

c: Requestor
(w/o enclosures)