



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 16, 2012

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

OR2012-02446

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# 445727.

The Austin Independent School District (the "district") received a request for information related to a named employee. You state you have released most of the responsive information. You claim the remaining requested 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 exception encompasses information that other statutes make confidential, such as section 21.355 of the Education Code, which provides in part that "[a] document evaluating the performance of a teacher or administrator is confidential." 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 an administrator. *See* Open Records Decision No. 643 (1996). We have determined that for purposes of section 21.355, "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 id.* at 4. We also have determined "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 id.* The Third Court of Appeals has concluded a written reprimand constitutes an evaluation for purposes of section 21.355, because “it reflects the principal’s judgment regarding [a teacher’s] actions, gives corrective direction, and provides for further review.” *See Abbott v. North East Indep. Sch. Dist.*, 212 S.W.3d 364 (Tex. App.—Austin 2006, no pet.).

You contend the submitted information you have labeled Exhibit B is confidential under section 21.355. You state, and provide documentation showing, the submitted information pertains to a district employee who is a certified administrator and teacher. Upon review, however, we find you have failed to demonstrate how the information at issue consists of “document[s] evaluating the performance of a teacher or administrator” as contemplated by section 21.355. Educ. Code § 21.355. Accordingly, we conclude the district may not withhold the information in Exhibit B based on section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code. As you raise no further exceptions to disclosure of Exhibit B, it must be released.

Section 552.101 of the Government Code also encompasses section 154.073 of the Civil Practice and Remedies Code, which provides in relevant part that

a communication relating to the subject matter of any civil or criminal dispute made by a participant in an alternative dispute resolution procedure, whether before or after the institution of formal judicial proceedings, is confidential, is not subject to disclosure, and may not be used as evidence against the participant in any judicial or administrative proceeding.

Civ. Prac. & Rem. Code § 154.073(a). In Open Records Decision No. 658 (1998), this office found that communications during the formal settlement process were intended to be confidential. *See* ORD 658 at 4. You contend the Request for Mediation you have labeled Exhibit C is confidential under section 154.073. You state this information was submitted under the formal mediation procedures established by the district. However, section 154.073 pertains to communications made during an actual alternative dispute resolution procedure. You do not explain, nor does the information reflect, the district and the employee participated in a formal alternative dispute resolution procedure. Further you have not explained the communication at issue was made during such a procedure. Accordingly, the district may not withhold Exhibit C under section 552.101 of the Government Code in conjunction with section 154.073 of the Civil Practice and Remedies Code. As you raise no further exceptions to disclosure of Exhibit C, it 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 cursive script, appearing to read "Jennifer Burnett".

Jennifer Burnett
Assistant Attorney General
Open Records Division

JB/dls

Ref: ID# 445727

Enc. Submitted documents

c: Requestor
(w/o enclosures)