



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 3, 2014

Mr. Randolph W. Stout
Randolph W. Stout, P.C.
513 West Oak Street
Denton, Texas 76201

OR2013-00219

Dear Mr. Stout:

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# 509875.

The Denton Independent School District (the "district"), which you represent, received three requests from the same requestor for information pertaining to the Staff Survey of Administrative Performance of a specified school for the years 2010-2011, 2011-2012, and 2012-2013.¹ You claim the requested information is excepted from disclosure under sections 552.101 and 552.102 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note, and you acknowledge, the district has not complied with the procedural requirements of section 552.301 of the Governmental Code in requesting this ruling. *See* Gov't Code § 552.301(b), (e). Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the information is public and must be released, unless the governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82

¹We note the district asked for clarification regarding this request. *See* Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information).

(Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); *see also* Open Records Decision No. 319 (1982). This office has held that a compelling reason exists to withhold information when the information is confidential by law or affects third party interests. *See* Open Records Decision No. 150 (1977). Because sections 552.101 and 552.102 of the Government Code can provide compelling reasons to withhold information, we will consider your arguments regarding these exceptions.

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 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). In Open Records Decision No. 643, we determined a “teacher” for purposes of section 21.355 means a person who (1) 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 (2) 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 determined an “administrator” for purposes of section 21.355 means a person who (1) is required to and does in fact hold an administrator’s certificate under subchapter B of chapter 21 of the Education Code and (2) is performing the functions of an administrator, as that term is commonly defined, at the time of the evaluation. *See id.* at 5; *Abbott v. North East Indep. Sch. Dist.*, 212 S.W.3d 364 (Tex. App.—Austin, 2006, no pet.).

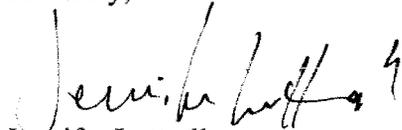
You state the Staff Survey of Administrative Performance is a “procedure to assist [district] administrators in improving their performance and enhancement of the educational environment of their school.” You explain the survey was for the purpose of “requesting staff to provide their opinion and/or evaluation of a [district] administrator.” You state the responses to the survey were used by the district “to assist in the evaluation of an administrator.” Based on your representations and our review, we find the submitted information is confidential under section 21.355 of the Education Code and must be withheld in its entirety pursuant to section 552.101 of the Government Code.²

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.

²As our ruling is dispositive, we need not address your remaining argument against disclosure.

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/som

Ref: ID# 509875

Enc. Submitted documents

c: Requestor
(w/o enclosures)