



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 28, 2020

Mr. Neil Bonavita
Office of Legal Services
Fort Worth Independent School District
100 North University Drive Southwest, Suite 224
Fort Worth, Texas 76107

OR2020-32244

Dear Ms. Bonavita:

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# 859878 (ORR# W003837).

The Fort Worth Independent School District (the "district") received a request for information pertaining to a named employee. The district claims the submitted information is excepted from disclosure under sections 552.101 and 552.111 of the Government Code. We have considered the claimed exceptions 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 section 21.355 of the Education Code. Section 21.355(a) provides "[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 an administrator. *See* Open Records Decision No. 643 at 3 (1996). We determined an "administrator" for purposes of 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 as an administrator, as that term is commonly defined, at the time of the evaluation. *Id.*

The district represents the submitted information consists of evaluations of the performance of an administrator who holds the appropriate certificate for the purpose of section 21.355 and was acting as an administrator at the time of the evaluations. Upon review, we find some of the submitted information is confidential under section 21.355. Therefore, the

district must withhold this information, which we have marked, under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code. However, we find the district has not established any of the remaining information consists of “[a] document evaluating the performance of a teacher or administrator” as contemplated by section 21.355. Accordingly, we conclude the district has not established the remaining information is confidential under section 21.355, and the district may not withhold it under section 552.101 on that ground.

Section 552.111 of the Government Code excepts from disclosure “[a]n interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency[.]” Gov’t Code § 552.111. In Open Records Decision No. 615 (1993), this office reexamined the predecessor to the section 552.111 exception in light of the decision in *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.—Austin 1992, no writ), and held section 552.111 excepts only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body. See *City of Garland v. Dallas Morning News*, 22 S.W.3d 351, 364 (Tex. 2000); *Arlington Indep. Sch. Dist. v. Tex. Attorney Gen.*, 37 S.W.3d 152 (Tex. App.—Austin 2001, no pet.). An agency’s policymaking functions do not encompass internal administrative or personnel matters; disclosure of information relating to such matters will not inhibit free discussion among agency personnel as to policy issues. ORD 615 at 5-6. Upon review, we conclude the information at issue consists of personnel matters, and not internal communications consisting of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body. Therefore, it is not excepted from release under section 552.111. Thus, the district must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code, but release the remaining 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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG’s Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,

James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/mo

Ref: ID# 859878

Enc. Submitted documents

c: Requestor
(w/o enclosures)