



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

April 29, 1994

Mr. Therold I. Farmer  
Walsh, Anderson, Underwood, Schulze,  
and Aldridge, P.C.  
P.O. Box 2156  
Austin, Texas 78768

OR94-203

Dear Mr. Farmer:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act (the "act"), Government Code chapter 552 (formerly V.T.C.S. article 6252-17a).<sup>1</sup> We assigned your request ID# 21812.

The Mabank Independent School District (the "school district"), which you represent, has received a request from a school district board member for "ITBS (NAPT) results for grades K-2 for the 1992-93 school year . . . by class unit/teacher. Teacher names should remain with the class score sheet." (Emphasis in original.) You seek to withhold these records pursuant to sections 552.101 and 552.102 of the act.<sup>2</sup>

Section 552.101 of the act protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." You contend that section 21.556(b) of the Education Code makes the requested information confidential. The

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<sup>1</sup>We note that the Seventy-third Legislature repealed V.T.C.S. article 6252-17a. Acts 1993, 73d Leg., ch. 268, § 46. The Open Records Act is now codified in the Government Code at chapter 552. *Id.* § 1. The codification of the Open Records Act in the Government Code is a nonsubstantive revision. *Id.* § 47.

<sup>2</sup>As noted above, the requestor is a member of the school board. This office has held that a member of a governmental body who seeks the records of the governmental body in his official capacity has an inherent right of access to those records. *See generally* Attorney General Opinion JM-119 (1983); Letter Opinion No. 93-69 (1993) (copies enclosed). Because you seek to withhold the requested information under the Open Records Act, however, we assume that you have determined that the requestor does not seek the records in his official capacity but rather as a member of the general public. This ruling addresses the availability of the requested records to members of the general public under the act; it does not address, and should not be construed in any way to limit, the requestor's right of access to records in his official capacity. Although we believe that section 35.030(b) of the Education Code does not affirmatively permit release of the requested information to the requestor, *see* note 3 *infra*, this ruling does not address what limits, if any, section 35.030(b) places on the requestor's inherent right of access to the requested information.

Seventy-third Legislature repealed section 21.556, Acts 1993, 73d Leg., ch. 347, § 7.12, at 1545, and enacted a similar statute in subchapter B, chapter 35, of the Education Code, Acts 1993, 73d Leg., ch. 347, § 7.01, at 1533. Subchapter B of chapter 35 of the Education Code requires the Central Education Agency to adopt assessment instruments designed to assess competencies in specified areas for specified grade levels. You advise us that the test at issue here is such an assessment instrument. Section 35.030(b) makes confidential the results of such tests and provides, in pertinent part:

The results of individual student performance on academic skills assessment instruments under this subchapter are confidential and may be made available only to the student, the student's parent or guardian, the school personnel directly involved with the student's educational program, and the Central Education Agency as required by this subchapter.

Section 35.030(b) also provides for public disclosure of the test results, but only in a specified format:

overall student performance data shall be aggregated by grade level, subject area, campus, and district and made available to the public, with appropriate interpretations, at regularly scheduled meetings of the governing board of each school district. The information may not contain the names of individual students or teachers.

You have submitted to us for review test results aggregated by teacher and class. Such information is clearly confidential under section 35.030(b). Moreover, the submitted information is not aggregated in a format that would permit its release to the public.<sup>3</sup> Accordingly, we agree with your contention that section 35.030(b) of the Education Code makes the requested information confidential and that the information submitted to us for review must be withheld from required public disclosure under section 552.101 of the act. As we resolve this request under section 552.101, we need not address the applicability of section 552.102.

If you have questions about this ruling, please contact this office.

Yours very truly,



Mary R. Crouter  
Assistant Attorney General  
Open Government Section

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<sup>3</sup>We do not believe that a member of a school board qualifies as "school personnel directly involved with the student's educational program." The term "personnel" generally refers to an organization's employees, but excludes the organization's management. See WEBSTER'S NEW COLLEGIATE DICTIONARY 878 (9th ed. 1991); WEBSTER'S NEW INTERNATIONAL DICTIONARY 1828 (2d ed. 1947).

MRC/GCK/rho

Enclosures: Attorney General Opinion JM-119  
Letter Opinion No. 93-69  
Submitted documents

Ref.: ID# 21812  
ID# 22258

cc: Mr. Joe McAnally  
Board Member  
c/o Mabank Independent School District  
Mabank, Texas 75147  
(w/o enclosures)