



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

April 17, 1997

Mr. Yuri Calderon
Assistant General Counsel
Houston Independent School District
Hattie Mae White Administration Building
3830 Richmond Avenue
Houston, Texas 77027-5838

OR97-0866

Dear Mr. Calderon:

You have asked whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 104966.

Houston Independent School District (the "district") received a request for information concerning named teachers and administrators. The requestor also sought information concerning a particular student and his parents. You state that you have released the non-confidential documents that are responsive to the request for records. As to the remaining records at issue, you assert that these documents are confidential pursuant to section 21.355 of the Education Code, in conjunction with section 552.101 of the Government Code. The records at issue have been provided to this office for review.

We first address the timeliness of your request for a decision. Section 552.301 of the Government Code provides that:

(a) A governmental body that receives a written request for information that it wishes to withhold from public disclosure and that it considers to be within one of the exceptions under [chapter 552] must ask for a decision from the attorney general about whether the information is within that exception if there has not been a previous determination about whether the information falls within one of the exceptions. The governmental body must ask for the attorney general's decision and state the exceptions that apply *within a reasonable time but not later than the 10th*

calendar day after the date of receiving the written request. [Emphasis added.]

Chapter 552 thus imposes a duty on a governmental body seeking an open records decision to submit that request to this office within ten days after receipt of the request for information. Failure to abide by this provision results in the presumption that information is public. Gov't Code § 552.302.

The open records request is date-stamped as having been received by the district on December 16, 1996. Your letter requesting a decision from this office is dated January 23, 1997. We note that even if a request is not timely, the presumption that information is public when the ten day deadline is missed, is overcome by a demonstration that the records at issue are made confidential by other law. *See* Open Records Decision No. 150 (1977) (presumption of openness overcome by showing information was made confidential by other law or affects third party interests). You assert that the information the district seeks to withhold from disclosure is protected by section 552.101 of the Government Code, which provides an exception from disclosure for information made confidential by law.

It is our understanding that the district withheld from disclosure information under sections 552.024 and 552.117 of the Government Code. Sections 552.024 and 552.117 provide that a public employee or official can opt to keep private his or her home address, home telephone number, social security number, or information that reveals that the individual has family members. This type of information is confidential as to those employees who made their elections prior to receipt of the request for records. *Open Records Decision Nos. 530 (1989) at 5, 482 (1987) at 4, 455 (1987).* The district also, in accordance with *Open Records Decision No. 634 (1995)*, withheld from disclosure information it determined to be confidential under the Family Educational Rights and Privacy Act ("FERPA"), title 20 of the United States Code, section 1232g.¹

You assert that the remaining documents are confidential evaluations of administrators and teachers. Section 21.355 of the Education Code provides that "[a] document evaluating the performance of a teacher or administrator is confidential." We have reviewed the documents at issue and agree that they are confidential pursuant to section 21.355 of the Education Code, in conjunction with section 552.101 of the Government Code.²

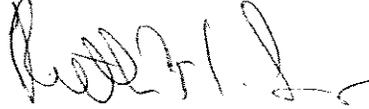
We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts

¹We have marked one document that appears to identify a parent and, pursuant to FERPA, should be de-identified prior to release. This document is not made confidential by any other law.

²We note that some of the documents were detached, apparently from the formal evaluations. For purposes of this ruling, we assume that these documents were part of the evaluations at issue. If they were no part of the evaluations, they are not excepted from disclosure.

presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Ruth H. Soucy
Assistant Attorney General
Open Records Division

RHS/ch

Ref.: ID# 104966

Enclosures: Submitted documents

cc: Mr. Jimmie Lee Newsom
3129 Oakdale
Houston, Texas 77004
(w/o enclosures)

