



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 30, 2007

Mr. W. Montgomery Meitler
Assistant Counsel
Office of Legal Services
Texas Education Agency
1701 North Congress Avenue
Austin, Texas 78701-1494

OR2007-09618

Dear Mr. Meitler:

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#285072.

The Texas Education Agency (the "agency") received thirteen requests for information *pertaining to administrator and teacher certifications, exam scores, and testing histories*. You ask whether the requested information is confidential under section 552.101 of the Government Code. We have also received correspondence from the Association of Texas Professional Educators ("ATPE"), the Texas State Teachers Association ("TSTA"), the Texas Classroom Teachers Association ("TCTA"), the Texas Association of School Personnel Administrators ("TASPA"), the Texas Elementary Principals and Supervisors Association ("TEPSA"), the Texas Association of School Boards Legal Assistance Fund ("TASB/LAF"), and the Texas American Federation of Teachers ("TAFT"). *See Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). We have considered all of the submitted arguments and reviewed the*

submitted representative sample of information.¹ We have also considered comments submitted by one of the requestors. *See id.*

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” *Id.* § 552.101. This section encompasses information protected by other statutes. Section 552.101 encompasses section 21.048 of the Education Code, which provides in part:

(c-1) The results of an examination administered under this section are confidential and are not subject to disclosure under [the Act] unless:

(1) the disclosure is regarding notification to a parent of the assignment of an uncertified teacher to a classroom as required by Section 21.057; or

(2) the educator has failed the examination more than five times.

Educ. Code § 21.048(c-1). We note that subsection 21.048(c-1), as added to section 21.048 by the Eightieth Legislature, is a new statute that took effect June 15, 2007. *See* Act of May 28, 2007, 80th Leg., R.S., S.B. 9, § 4 (to be codified at Educ. Code Ann. § 21.048(c-1)). You inform us that the submitted information consists of results of examinations administered under section 21.048 of the Education Code. Specifically, you state that the information at issue pertains to the Texas Examinations of Educator Standards and the Examination for the Certification of Educators in Texas. You inform us that a portion of the submitted information pertains to educators who have failed these examinations more than five times. Upon review, in order to effectuate the legislative intent that examination results not be released, we determine that the information we have marked is confidential under section 21.048(c-1) of the Education Code and must be withheld under section 552.101 of the Government Code. The remaining information is not confidential under section 21.048(c-1) in that it either does not reveal a “result” under the statute or pertains to an educator who has failed the examinations at issue more than five times. Consequently, the remaining information may not be withheld under section 552.101 in conjunction with section 21.048 of the Education Code. *See id.* § 21.048(c-1)(2).

We note that the third parties have also raised section 21.355 of the Education Code with regard to the submitted information. Section 552.101 encompasses section 21.355 of the

¹We assume that the “representative sample” of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Education Code, which provides that “[a] document evaluating the performance of a teacher or administrator is confidential.” *Id.* § 21.355. 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 that for purposes of section 21.355, the word “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* Open Records Decision No. 643 at 4. We also determined that the word “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. *Id.*

Having considered the submitted arguments and reviewed the information at issue, we conclude that the third parties have not demonstrated that the information in question is an evaluation of a teacher or administrator for the purposes of the statute. Therefore, the agency may not withhold any of the submitted information under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code.

In summary, the agency must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 21.048 of the Education Code. The remaining information must be released to the requestors.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. *Gov’t Code* § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the

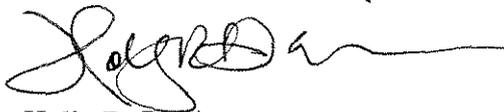
Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Office of the Attorney General at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Holly R. Davis
Assistant Attorney General
Open Records Division

HRD/eeg

Ref: ID# 285072

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