



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

April 2, 2008

Mr. Miles LeBlanc
Assistant General Counsel
Houston Independent School District
4400 West 18th Street
Houston, Texas 77092-85001

OR2008-04396

Dear Mr. LeBlanc:

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# 306357.

The Houston Independent School District (the "district") received a request for "an electronic spreadsheet listing the performance bonus estimates, released to employees on Jan. 9, 2008, listed by employee name, employee ID, school, job title and estimated bonus amount." You claim that the submitted information is excepted from disclosure under sections 552.101, 552.111, and 552.139 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted representative sample of information.²

¹We note that you did not raise section 552.139 as an exception to disclosure within ten business days of the date the district received the present request. *See* Gov't Code §§ 552.301(b), 302. However, because section 552.139 is a mandatory exception that can provide a compelling reason to withhold information from disclosure, we will address your claim under section 552.139. *See id.* § 552.302; *see also* Open Records Decision Nos. 150 at 2 (1977), 319 (1982).

²We 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.

Initially, we note that in the present request, the requestor only seeks a specified "spreadsheet listing the performance bonus estimates . . . listed by employee name, employee ID, school, job title and estimated bonus amount." Accordingly, any information other than the spreadsheet is not responsive to this request. The district need not release nonresponsive information, which we have marked, in response to this request and this ruling will not address that information.

Next, we note that the submitted information falls within the scope of section 552.022(a)(5) of the Government Code. You state that the information consists of a draft summary of proposed employee performance bonuses that were subject to appeal by the employees concerned. You indicate that the review and appeal process is complete. Thus, the information at issue is subject to section 552.022(a)(5), which provides for required public disclosure of "all working papers, research material, and information used to estimate the need for or expenditure of public funds or taxes by a governmental body, on completion of the estimate," unless the information is expressly confidential under other law. Gov't Code § 552.022(a)(5). Although, you seek to withhold all of the submitted information under section 552.111 of the Government Code, that section is a discretionary exception to disclosure that protects a governmental body's interests, and may be waived. *See id.* § 552.007; Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 470 at 7 (1987) (statutory predecessor to Gov't Code § 552.111 subject to waiver). As such, section 552.111 is not other law that makes information confidential for the purposes of section 552.022. Therefore, the district may not withhold any of the requested information under section 552.111. However, sections 552.101 and 552.139 are other law for purposes of section 552.022. Accordingly, we will address your arguments under these sections.

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 exception encompasses information made confidential by other statutes. You raise section 552.101 in conjunction with section 21.355 of the Education Code, which provides that "[a] document evaluating the performance of a teacher or administrator is confidential." Educ. Code § 21.355. Section 21.355 applies to any document that evaluates, as that term is commonly understood, the performance of a teacher or 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 id.* at 4. Upon review of the submitted information, we conclude that you have not demonstrated that the submitted information is an evaluation of a teacher or administrator for the purposes of section 21.355. Therefore, the district may not withhold the submitted information under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code.

Finally, you state that some of the submitted information is subject to section 552.139 of the Government Code. Section 552.139(a) provides the following:

(a) Information is excepted from the requirements of Section 552.021 if it is information that relates to computer network security or to the design, operation, or defense of a computer network.

Gov't Code § 552.139(a). Upon review, however, we find that the district has failed to demonstrate how any portion of the submitted information relates to computer network security or to the design, operation, or defense of a computer network. Therefore, none of the submitted information may be withheld under section 552.139. As you raise no other arguments against disclosure, the submitted information must be released.

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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, 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 challenge 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,



Loan Hong-Turney
Assistant Attorney General —
Open Records Division

LH/eeg

Ref: ID# 306357

Enc. Submitted documents

c: Ms. Ericka Mellon
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(w/o enclosures)