



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 16, 2009

Mr. Miles J. LeBlanc  
Assistant General Counsel  
Houston Independent School District  
4400 West 18th Street  
Houston, Texas 77092-8501

OR2009-04997

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# 340729.

The Houston Independent School District ("HISD") received two requests from the same requestor for a list of teachers who ranked in the top and bottom ten percent of value-added data for the previous two years. You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.102 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses information protected by other statutes, including 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. 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 administrator. *See* Open Records Decision No. 643 (1996). For the purposes of section 21.355, a teacher is someone who is required to and does in fact hold a teaching certificate or permit required under chapter 21 of the Education Code and who is engaged in the process of teaching at the time of the evaluation. *See id.* at 4.

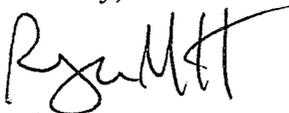
You explain that the submitted information constitutes evaluations of HISD teachers who held the appropriate teaching certificates or permits and were engaged in teaching at the time of the evaluations. Based on your representations and our review, we conclude that the information at issue is confidential under section 21.355 of the Education Code.

We next address HISD's acknowledgment that it has previously voluntarily released information similar to the information currently at issue. The Act does not permit selective disclosure of information. *See* Gov't Code § 552.007(b); Open Records Decision No. 463 at 1-2 (1987). Thus, if information has been voluntarily released to any member of the public, that same information may not subsequently be withheld from another member of the public unless public disclosure of the information is expressly prohibited by law or the information is confidential under law. *See* Gov't Code § 552.007(a); Open Records Decision Nos. 518 at 3 (1989), 490 at 2 (1988). In this instance, we conclude that the submitted information is confidential under section 21.355 of the Education Code. Therefore, even if the information at issue was previously voluntarily released, section 552.007 of the Government Code is not applicable to this information. We thus conclude that HISD must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code.<sup>1</sup>

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 [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Ryan T. Mitchell  
Assistant Attorney General  
Open Records Division

RTM/eb

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<sup>1</sup>As this ruling is dispositive, we need not address your argument for exception under section 552.102 of the Government Code.

Ref: ID# 340729

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)