



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 26, 2009

Mr. Kent W. Johns  
Johns & Johns  
Attorneys at Law  
Counsel for Tekoa Academy of Accelerated Studies  
P.O. Box 808  
Beaumont, Texas 77704

OR2009-07074

Dear Mr. Johns:

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# 346231.

Tekoa Academy of Accelerated Studies (the "academy"), which you represent, received a request for the percentage of third, fifth, and eighth grade students who passed (met standard) on the first administration of the TAKS reading test that was administered on March 3, 2009. You claim the requested information is excepted from disclosure under section 552.101 of the Government Code and the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232(g). We have considered your arguments.

Initially, you assert the requested information is not a final document, evaluation, or analysis, and therefore, is not public information subject to disclosure under the Act. Section 552.002(a) of the Act provides:

(a) In this chapter, "public information" means information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

- (1) by a governmental body; or
- (2) for a governmental body and the governmental body owns the information or has a right of access to it.

Gov't Code § 552.002(a). Information is generally subject to the Act when it is held by a governmental body and it relates to the official business of a governmental body or is used by a public official or employee in the performance of official duties. *See* Open Records

Decision No. 635 (1995). Virtually all information that is in a governmental body's physical possession constitutes public information. Gov't Code § 552.002; *see also* Open Records Decision Nos. 549 at 4 (1990), 514 at 1-2 (1989). Drafts constitute public information subject to the Act provided the information is maintained by the governmental body and relates to the transaction of official business. Accordingly, as the percentages are maintained by the academy in connection with the transaction of its official business, this information is subject to the Act and may only be withheld if an exception to disclosure applies. Thus, we address the exception you raise for this information.

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. Section 552.101 encompasses information protected by other statutes, such as FERPA. You argue the requested information is subject to FERPA, which provides no federal funds will be made available under any applicable program to an educational agency or institution that releases personally identifiable information (other than directory information) contained in a student's education records to anyone but certain enumerated federal, state, and local officials and institutions, unless otherwise authorized by the student's parent. 20 U.S.C. § 1232g(b)(1). "Education records" means those records that contain information directly related to a student that are maintained by an educational agency or by a person acting for such agency or institution. *Id.* § 1232g(a)(4)(A). The request for percentages of students who passed the TAKS reading test is not a request for education records because the records are not directly related to a student or personally identify a student. Instead, the percentages are overall student performance data to which FERPA does not apply. *See* Open Records Decision No. 132 (1976) (holding records pertaining to achievement test scores by grade and school are not records which identify individual students and therefore are not restricted from disclosure under FERPA). Therefore, the academy may not withhold the requested percentages under FERPA.

Next, the academy asserts chapter 39 of the Education Code is an exception to disclosure, but does not specify a statutory provision of that chapter that applies. We note section 39.030(b) addresses the confidentiality of TAKS scores and provides in relevant part:

(b) The results of individual student performance on academic skills assessment instruments administered under [subchapter B, chapter 39 of the Education Code] are confidential and may be released only in accordance with [FERPA]. However, overall student performance data shall be aggregated by ethnicity, sex, grade level, subject area, campus, and district and made available to the public, with appropriate interpretations, at regularly scheduled meetings of the board of trustees of each school district. The information may not contain the names of individual students or teachers.

Educ. Code § 39.030(b). The TAKS test is an academic skills assessment instrument as contemplated by subchapter B, chapter 39 of the Education Code. *See id.* §§ 39.022, .023. Subsection 39.030(b) makes confidential the results of individual student performance on the TAKS test, and not overall student performance data. As the requested percentages do

not reveal the results of individual student performance on the TAKS test, they are not confidential under section 39.030.

Section 552.101 of the Government Code also encompasses section 21.355 of the Education Code, which provides “[a] document evaluating the performance of a teacher or administrator is confidential.” *Id.* § 21.355. This office has interpreted this section to apply to any document that evaluates, as that term is commonly understood, the performance of a teacher or administrator. Open Records Decision No. 643 (1996). In Open Records Decision No. 643, we determined a “teacher” for purposes of section 21.355 means a person who (1) 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 (2) 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, we find the requested percentages do not constitute a document that evaluates the job performance of a teacher for purposes of section 21.355. Accordingly, the academy may not withhold the information under section 552.101 of the Government Code.

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,



Emily Sitton  
Assistant Attorney General  
Open Records Division

EBS/rl

Ref: ID# 346231

Enc. Submitted documents

c: Requestor  
(w/o enclosures)