



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 3, 2009

Mr. Dennis J. Eichelbaum
Schwartz & Eichelbaum Wardell Mehl and Hansen, P.C.
5300 Democracy Drive, Suite 200
Plano, Texas 75024

OR2009-07594

Dear Mr. Eichelbaum:

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# 344938.

The Killeen Independent School District (the "district"), which you represent, received a request for six categories of information. You state that you have released the requested budgets, investigative report, statements, and lesson plans to the requestor. You claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code.¹ We have considered the exception you claim and reviewed the submitted information.

Initially, we note that the district has not complied with the time period prescribed by section 552.301 of the Government Code in submitting its request for a decision to this office. Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See Gov't Code § 552.302; Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ); Open Records Decision No. 319 (1982). A compelling reason

¹Although you cite section 39.030(b) of the Education Code for your argument to withhold the submitted information, we understand you to raise section 552.101 of the Government Code in conjunction with section 39.030(b), as this is the proper exception for your argument.

exists when third-party interests are at stake or when information is confidential under other law. Open Records Decision No. 150 (1977). Because the district's claim under section 552.101 of the Government Code can provide a compelling reason for non-disclosure under section 552.302, we will consider the applicability of this exception to the submitted information.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information protected by other statutes. Section 39.030 of the Education Code provides in relevant part:

(a) In adopting academic skills assessment instruments under [subchapter B, chapter 39 of the Education Code], the State Board of Education or a school district shall ensure the security of the instruments and tests in their preparation, administration, and grading. Meetings or portions of meetings held by the State Board of Education or a school district at which individual assessment instruments or assessment instrument items are disclosed or adopted are not open to the public under Chapter 551, Government Code, and the assessment instruments or assessment instrument items are confidential.

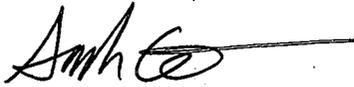
(b) The results of individual student performance on academic skills assessment instruments administered under [subchapter B, chapter 39 of the Education Code] are confidential and may be released only in accordance with [FERPA]. However, overall student performance data shall be aggregated by ethnicity, 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(a)-(b). You indicate that the submitted information consists of aggregated results of student performance on the TAKS test, which is an academic skills assessment instrument as contemplated by subchapter B, chapter 39 of the Education Code. You further indicate that the submitted aggregated TAKS scores are organized by individual teacher name. We note that the aggregated data are public under section 39.030(b) but that the individual names of teachers associated with that aggregated data are confidential. Therefore, we have marked the individual teacher names that are confidential under section 39.030(b) of the Education Code and must be withheld under section 552.101 of the Government Code. However, we conclude that none of the remaining information at issue is confidential under section 39.030 of the Education Code. Thus, the remaining submitted information must be released to the requestor.

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, 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,



Sarah Casterline
Assistant Attorney General
Open Records Division

SEC/jb

Ref: ID# 344938

Enc. Submitted documents

c: Requestor
(w/o enclosures)