



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 22, 2009

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

OR2009-13360

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# 355941 (TEA PIR# 11499).

The Texas Education Agency (the "agency") received a request for specified demographic, test taking, and test result information regarding individuals who took the TExES Principal Certification examination between January 2003 and December 2008. You claim a portion of the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.¹

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 that other statutes make

¹We assume 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 those records contain substantially different types of information than that submitted to this office.

confidential. You raise section 552.101 in conjunction with 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). You seek to withhold the ethnicity of an individual because the individual was the only person of that particular ethnicity to take the exam at issue at his or her school. You argue releasing the ethnicity would reveal the individual's identity and, thus, would reveal the individual's test results. We note, however, that section 21.048(c-1) makes confidential only the results of an examination administered under this statute. Therefore, the agency may not withhold the marked ethnicity under section 552.101 of the Government Code in conjunction with section 21.048(c-1) of the Education Code.

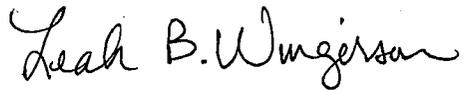
You inform us, however, that the requested information contains the results of examinations administered under section 21.048 of the Education Code. Although you state section 21.048(c-1)(1) is not applicable in this instance, you have not explained whether or not the individuals at issue failed the examination more than five times. *See* Educ. Code § 21.048(c-1)(1), (2). Thus, to the extent the individuals listed in the information at issue have not failed the examination more than five times, the agency must withhold the requested test results under section 552.101 of the Government Code in conjunction with section 21.048(c-1) of the Education Code. To the extent the individuals have failed the examination more than five times, the agency may not withhold those individuals' test results under section 552.101 of the Government Code in conjunction with section 21.048(c-1) of the Education Code. As you have claimed no other exceptions to disclosure, this information, along with the remaining information, must be released.

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, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in cursive script that reads "Leah B. Wingerson".

Leah B. Wingerson
Assistant Attorney General
Open Records Division

LBW/dls

Ref: ID# 355941

Enc. Submitted documents

c: Requestor
(w/o enclosures)