



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 19, 2010

Ms. Bertha Bailey Whatley
Chief Legal Counsel
Fort Worth Independent School District
100 North University Drive
Fort Worth, Texas 76107

OR2010-01079A

Dear Ms. Whatley:

This office issued Open Records Letter No. 2010-01079 (2010) on January 25, 2010. Since that date, you have provided new information that affects the facts on which that ruling was based. Consequently, this decision serves as the corrected ruling and is a substitute for the decision issued on January 25, 2010. *See generally* Gov't Code § 552.011 (providing that Office of Attorney General may issue decision to maintain uniformity in application, operation, and interpretation of Public Information Act (the "Act")).

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 375665 (previous ID# 368088).

The Fort Worth Independent School District (the "district") received two requests for information pertaining to the Public Educators Accelerating Kids program ("PEAK"). The first request seeks the names, positions, and schools of teachers and staffers who received bonuses through PEAK; information pertaining to the total amount available to each school through PEAK and how much each school actually received; and information pertaining to how the bonuses through PEAK were determined. The second request seeks the name, title, campus assignment, and amount paid out to each teacher paid through PEAK. You claim the submitted 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

Initially, we note you have only submitted some information responsive to the portion of the first request that seeks information pertaining to how the bonuses through PEAK were determined. Therefore, to the extent any additional responsive information existed at the time the district received the requests for information, we assume you have released it to the requestors. If you have not released any such information, you must do so at this time. *See id.* §§ 552.301(a), .302; Open Records Decision No. 664 (2000) (noting that if a governmental body concludes that no exceptions apply to the requested information, it must release information as soon as possible under circumstances).

Next, we note that the United States Department of Education Family Policy Compliance Office has informed this office that the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232g, does not permit state and local educational authorities to disclose to this office, without parental consent, unredacted, personally identifiable information contained in education records for the purpose of our review in the open records ruling process under the Act.² *See* 20 U.S.C. § 1232g(b); *see also id.* § 1232g(a)(4)(A) (defining "education records"); Open Records Decision No. 462 at 15 (1987). Consequently, state and local educational authorities that receive a request for education records from a member of the public under the Act must not submit education records to this office in unredacted form, that is, in a form in which "personally identifiable information" is disclosed. *See* 34 C.F.R. § 99.3 (defining "personally identifiable information"). You seek to withhold Exhibit C pursuant to FERPA. Because our office is prohibited from reviewing an education record to determine whether appropriate redactions under FERPA have been made, we will not address the applicability of FERPA to Exhibit C. Such determinations under FERPA must be made by the educational authority in possession of the education records.

Section 552.101 of the Government Code exempts 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,

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

²A copy of this letter may be found on the Office of the Attorney General's website at <http://www.oag.state.tx.us/open/20060725usdoe.pdf>.

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 seek to withhold specific teacher value-added analysis reports, submitted as Exhibit A, that relate to how the bonuses through PEAK were determined. You state, and the submitted documents reflect, these reports are used to evaluate how well a specific teacher facilitates student progress. You further state these value-added analysis reports are compiled by the district to evaluate teachers who hold certificates required under chapter 21 of the Education Code. Upon review, we agree the submitted specific teacher value-added analysis reports constitute teacher evaluations for purposes of section 21.355. Accordingly, the district must withhold Exhibit A under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code. However, the remaining documents pertain to value-added analysis reports of entire grade levels and schools within the district. These reports constitute aggregate information that do not pertain to any specific teacher. We find this aggregate information does not constitute a teacher evaluation for purposes of section 21.355. Accordingly, the district may not withhold any portion of the remaining information under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code.

We note some of the remaining information is protected by copyright. A governmental body must allow inspection of copyrighted materials unless an exception applies to the information, but a custodian of public records must comply with copyright law and is not required to furnish copies of records that are copyrighted. *See* Attorney General Opinion JM-672 (1987). Thus, if a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit. *See* Open Records Decision No. 550 (1990).

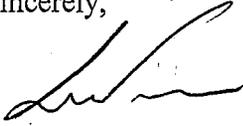
In summary, this ruling does not address the applicability of FERPA to Exhibit C. The district must withhold Exhibit A under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code. The remaining information must be released, but any information protected by copyright must be released in accordance with copyright law.

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,



Ana Carolina Vieira
Assistant Attorney General
Open Records Division

ACV/eeg

Ref: ID# 375665

Enc. Submitted documents

c: Requestor
(w/o enclosures)