



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 6, 2010

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

OR2010-04806

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# 375796.

The Houston Independent School District (the "district") received two requests from the same requestor for information pertaining to district teachers, classrooms, and students, including information pertaining to district test scores, teacher evaluation scores, and teacher bonuses distributed by the district. You indicate you do not maintain some of the information responsive to the request.¹ We also understand you to have released some of the responsive information to the requestor. 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.² We have also received and considered comments from the requestor. *See Gov't Code* § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, we note you have included in the submitted information columns identifying the names of the classroom teachers and the schools at which the teachers at issue worked. We

¹We note that the Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

²We assume that 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.

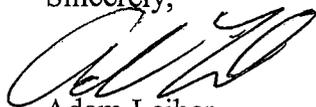
note the requestor specifically excludes from his requests the identities of teachers and the identities of the teachers' schools. Thus, such information is not responsive to the present requests. This ruling does not address the public availability of any information that is not responsive to the requests, and the district is not required to release that information in response to the requests.

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." *Id.* § 552.101. Section 552.101 encompasses information protected by other statutes, including section 21.355 of the Education Code, which provides "[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 state the responsive information consists of value-added scores that the district compiles as an evaluation of its teachers. However, we note the responsive information does not identify a teacher. Thus, the responsive information does not constitute teacher evaluations for purposes of section 21.355. Accordingly, the district may not withhold any portion of the responsive information under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code. As you raise no further exceptions to disclosure, the district must release the responsive information 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, toll free, at (888) 672-6787.

Sincerely,



Adam Leiber
Assistant Attorney General
Open Records Division

ACL/rl

Ref: ID# 375796

Enc. Submitted documents

c: Requestor
(w/o enclosures)