



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 16, 2010

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

OR2010-14104

Dear Mr. Metiler:

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# 393636 (PIR# 13446).

The Texas Education Agency (the "agency") received two requests from the same requestor for specified pilot principal surveys submitted to the agency.¹ You state you will release responsive surveys that do not identify a specific teacher. You claim that 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 submitted the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

¹The agency sought and received clarification of the information requested. *See* Gov't Code § 552.222 (providing that if request for information is unclear, governmental body may ask requestor to clarify request).

²We 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.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. This exception encompasses information that other statutes make confidential. You raise section 552.101 in conjunction with 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. In Open Records Decision No. 643 (1996), this office interpreted section 21.355 to apply to any document that evaluates, as that term is commonly understood, the performance of a teacher or an administrator. *See* ORD 643 at 3. Additionally, we determined that for purposes of section 21.355, the word "teacher" means a person who 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 who is engaged in the process of teaching, as that term is commonly defined, at the time of the evaluation. *See id.* at 4.

You contend the submitted information, which consists of survey results, constitutes confidential teacher evaluations subject to section 21.355 of the Education Code. You state the submitted information was "required to be submitted to [the agency] in accordance with sections 21.045 and 21.0452 of the Education Code and section 229.3 [of title 19] of the Texas Administrative Code." *See* 19 T.A.C. § 229.3; *see also* Educ. Code §§ 21.045, .0452. Section 21.045 of the Education Code mandates the establishment of standards to govern the accountability of all Educator Preparation Programs ("EPP"). *See* Educ. Code § 21.045. Pursuant to section 21.0452 of the Education Code, the State Board for Educator Certification ("SBEC") must make information pertaining to an EPP available to the public. *See id.* § 21.0452(a); *see also id.* § 21.0452(b)(8) (requiring results of surveys given to school principals involving the evaluation of an EPP's effectiveness in participants' preparation to be made available on the State Board of Education's website). Section 229.3 of title 19 of the Texas Administrative Code requires school administrators and principals to submit surveys to the agency that evaluate the effectiveness of preparation for classroom success for each EPP. 19 T.A.C. § 229.3(a), (e), (f)(4). We note that section 229.1(b) of title 19 of the Texas Administrative Code provides "[t]he purpose of the accountability system for educator preparation is to assure that each EPP is held accountable for the readiness for certification of [EPP candidates.]" *Id.* § 229.1(b); *see also id.* § 229.1(a) (SBEC is responsible for creating standards to govern the accountability of all EPPs). We also note the submitted information reflects that the purpose of the survey at issue "is to evaluate the effectiveness of [EPPs]." Although you contend the submitted information evaluates teachers for purposes of section 21.355 of the Education Code, we find the submitted information evaluates the effectiveness of EPPs in general rather than the performance of a teacher. Thus, we find you have failed to demonstrate how the submitted information falls within the scope of section 21.355 of the Education Code. Accordingly, the submitted information may not be withheld under section 552.101 on that basis. As no further exceptions to disclosure have been raised, the submitted 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,



Christina Alvarado
Assistant Attorney General
Open Records Division

CA/tp

Ref: ID#393636

Enc. Submitted documents

c: Requestor
(w/o enclosures)