



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 29, 2007

Ms. Heather M. Castillo  
Hill Gilstrap P.C.  
1400 West Abram Street  
Arlington, Texas 76013

OR2007-06584

Dear Ms. Castillo:

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# 280839.

The Arlington Independent School District (the "district"), which you represent, received a request for information pertaining to a specified incident, as well as certain disciplinary information. You state that the district does not have some of the requested information and that it is not required to answer questions.<sup>1</sup> You also state that some of the requested information is being released, but 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.<sup>2</sup>

Initially, you inform us that the district asked the requestor for clarification of some of the requested information. *See* Gov't Code § 552.222 (if request for information is unclear, governmental body may ask requestor to clarify request); *see also* Open Records Decision

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<sup>1</sup>We note the Act does not require a governmental body to disclose information that did not exist when the request for information was received. *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex.App.—San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986). The Act also does not require a governmental body to answer factual questions, conduct legal research, or create new information in responding to a request. *See* Open Records Decision Nos. 563 at 8 (1990), 555 at 1-2 (1990).

<sup>2</sup>We 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.

No. 31 (1974) (when presented with broad requests for information rather than for specific records, governmental body may advise requestor of types of information available so that request may be properly narrowed). You inform us that the requestor has not yet responded to this request for clarification; therefore, the district is not required to release any responsive information for which it sought clarification. But if the requestor responds to the clarification request, the district must seek a ruling from this office before withholding any responsive information from the requestor. *See* Open Records Decision No. 663 (1999) (ten-business-day deadline tolled while governmental body awaits clarification).

You also inform us that “[p]ersonally identifiable information has been redacted from” the submitted information; however, you do not assert, nor does our review of our records indicate, that the district has been authorized to withhold any such information without seeking a ruling from this office. *See* Gov’t Code § 552.301(a); Open Records Decision No. 673 (2000). Because we can discern the nature of the information that has been redacted, being deprived of this information does not inhibit our ability to make a ruling in this instance. Nevertheless, be advised that a failure to provide this office with requested information generally deprives us of the ability to determine whether information may be withheld and leaves this office with no alternative other than ordering that the redacted information be released. *See* Gov’t Code §§ 552.301(e)(1)(D) (governmental body must provide this office with copy of “specific information requested”), 552.302.

We must also address the district’s obligations under section 552.301 of the Government Code, which prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request. You inform us that the district received the request for information on March 21, 2007; however, your request for a ruling from this office is postmarked April 7, 2007. *See* Gov’t Code § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail). Thus, the district thus failed to comply with the procedural requirements mandated by section 552.301.

Pursuant to section 552.302 of the Government Code, a governmental body’s failure to comply with the procedural 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 exists when third-party interests are at stake or when information is confidential under other law. Open Records Decision No. 150 (1977). Section 552.101 of the Government Code can provide a compelling reason to overcome this presumption; therefore, we will consider whether this section requires the district to withhold the submitted information.

Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” This section encompasses

information protected by other statutes. Section 21.355 of the Education Code provides that “[a] document evaluating the performance of a teacher or administrator is confidential.” 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. *See* Open Records Decision No. 643 (1996). In Open Records Decision No. 643, we determined that a “teacher” for purposes of section 21.355 means a person who (1) 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 (2) is engaged in the process of teaching, as that term is commonly defined, at the time of the evaluation. *See id.* at 4.

You inform us that Exhibit A does not pertain to a teacher, but instead to a teacher’s assistant; thus, we understand you to assert that the individual at issue in Exhibit A does not hold a teaching certificate under subchapter B of chapter 21 of the Education Code or a school district teaching permit under section 21.055. Accordingly, we find you have failed to establish that Exhibit A is confidential under section 21.355 of the Education Code, and the district may not withhold it under section 552.101 of the Government Code on that ground. You inform us that Exhibits B, C, and D pertain to teachers. On review of the information, we agree that of the remaining information consists of evaluations. *See North East Indep. Sch. Dist. v. Abbott*, 212 S.W.3d 364 (Tex.App.–Austin 2006, no pet.) (written reprimand constitutes an evaluation for purposes of section 21.355 of Education Code). Thus, provided the employees at issue were required to hold and did hold the appropriate certificates and were teaching at the time of the submitted teaching evaluations, the district must withhold Exhibits B, C, and D under section 552.101 in conjunction with section 21.355.

To conclude, the district must withhold Exhibits B, C, and D under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code if the individuals at issue were required to hold and did hold the appropriate certificates and were teaching at the time of these teaching evaluations. The district must release the remaining information, including any redacted information that is not confidential under section 21.355.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Office of the Attorney General at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



James L. Coggeshall  
Assistant Attorney General  
Open Records Division

JLC/jb

Ref: ID# 280839

Enc. Submitted documents

c: Ms. Patricia Thompkins  
6507 Spencer Drive  
Arlington, Texas 76002  
(w/o enclosures)